

ENTERED ON DOCKET

DATE 9-30-93

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 29 1993

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

JACK D. PETTY,

Plaintiff,

vs.

JANENE MCGUIRE,

Defendant.

Case No. 93-C-710E

NOTICE OF DISMISSAL WITH PREJUDICE

Comes now the Plaintiff, Jack D. Petty, and, pursuant to a settlement entered into by and between the parties, and further pursuant to Rule 41.(a), hereby dismisses with prejudice the above styled action.

Respectfully submitted,

ROBINSON, LEWIS, ORBISON,
SMITH & COYLE

By 

Patricia E. Neel, OBA #6601
P. O. Box 1046
Tulsa, Oklahoma 74101
(918) 583-1232

ATTORNEYS FOR PLAINTIFF

ENTERED ON DOCKET

DATE 9-30-93

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

BARBARA E. COOPER,
SSN 438-58-9797,

Plaintiff,

vs.

DONNA E. SHALALA,
SECRETARY OF HEALTH AND
HUMAN SERVICES,

Defendant.

FILED

SEP 30 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

CASE NO. 93-C-586-3

ORDER

Upon the motion of the defendant, Secretary of Health and Human Services, by Stephen C. Lewis, United States Attorney of the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, and for good cause shown, it is hereby ORDERED that this case be remanded to the Secretary for further administrative action.

DATED this 29 day of September, 1993.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

SUBMITTED BY:

STEPHEN C. LEWIS
United States Attorney


PETER BERNHARDT, OBA #741
Assistant United States Attorney

ENTERED ON DOCKET

DATE 9-30-93

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 29 1993

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

PEGGY STURM,

Plaintiff,

v.

MCDONNELL DOUGLAS
CORPORATION,

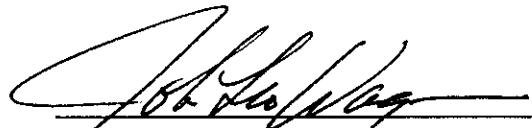
Defendant.

Case No. 92-C-339-E

JUDGMENT

Judgment is entered in favor of Defendant, McDonnell Douglas Corporation.

Dated this 28th day of September, 1993.



JOHN LEO WAGNER

UNITED STATES MAGISTRATE JUDGE

ENTERED ON DOCKET

DATE

9-30-93

FILED

SEP 29 1993

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

CHERYL A. WILLIAMS,

Plaintiff,

v.

GREATER TULSA TRANSIT CENTER, INC.,
et al.,

Defendants.

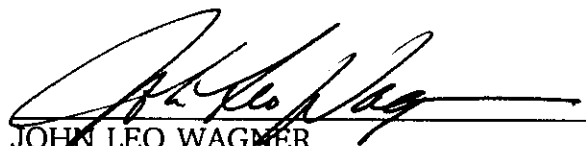
Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

90-C-780-E

JUDGMENT

The jury having returned a verdict in favor of Plaintiff, Cheryl A. Williams, and against Defendant, Peoples Checker Cab Company, Inc., in the amount of \$0.00, the court hereby enters judgment for the Defendant.

Dated this 28th day of September, 1993.


JOHN LEO WAGNER
UNITED STATES MAGISTRATE JUDGE

ENTERED ON DOCKET

DATE 9-30-93

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

EDDIE DUANE BUNTIN,
Plaintiff,

vs.

OKLAHOMA EMPLOYMENT SECURITY
COMMISSION, ex rel. State of
Oklahoma;

Defendant.

No. 92-C-650-E

FILED

SEP 29 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA


ORDER

COMES NOW BEFORE THE COURT FOR CONSIDERATION the Defendant's motion to dismiss (docket #6) and Plaintiff's objections thereto. For the reasons stated herein, Defendant's motion is hereby granted.

Plaintiff filed his pro se complaint August 27, 1992. Even construed in a fashion most favorably to the Plaintiff, the complaint wholly fails to state a claim upon which relief can be granted, and for that reason this action must be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6).

IT IS THEREFORE ORDERED that Defendant's motion to dismiss is hereby granted AND that all other motions now pending are hereby rendered moot.

ORDERED this 28th day of September, 1993.


JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

ENTERED ON DOCKET

DATE 9-29-93

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

HOMEWARD BOUND, INC.,)
et al.,)

Plaintiffs,)

vs.)

Case No. 85-C-437-E

HISSOM MEMORIAL CENTER,)
et al.,)

Defendants.)

F I L E D

SEP 29 1993

Richard M. Lamm, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

AGREED JUDGMENT

On this 28 day of September, 1993, this matter came before the Court for its consideration, pursuant to the August 2, 1993 Order of the Court directing the Parties to prepare an Agreed Form of Judgment to be submitted to the Court.

IT IS AGREED BY THE PARTIES AND ORDERED, ADJUDGED AND DECREED, in accordance with the Order of the Court, filed in this matter on August 2, 1993, that the former Guardian ad litem in this matter, Judith A. Finn shall have and recover of and from the Defendants judgment in the following amounts representing the full amount of her fee requests: \$184,470.00 for her services rendered during the thirty months of her tenure as Guardian ad litem; \$5,217.50 for her services on behalf of the model program (docket #1023); and \$6,373.83 in supplemental fees and expenses (docket #1183), for a total judgment in the amount of \$196,061.33.

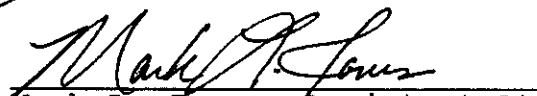
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that interest shall accrue on the adjudged amounts at the rate of 3.40 per annum from January 31, 1994 until paid in full.

S/ JAMES O. ELLISON

THE HON. JAMES O. ELLISON, CHIEF JUDGE

APPROVED AS TO FORM AND CONTENT:


Judith A. Finn


Mark L. Jones, Assistant Attorney General and
Counsel for the Defendants.

ENTERED ON DOCKET

DATE 9-29-93

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FRANK OTERO,

Plaintiff,

vs.

SUSAN LOVING, et al.,

Defendants.

No. 93-C-398-E

FILED

SEP 28 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

O R D E R

The Court has for consideration the Motion of the Plaintiff for Default Judgment (docket #7) and the Motion of the Defendant George Russell, Jr. (now deceased) to Dismiss (docket #3). That Plaintiff's Motion for Default Judgment is patently frivolous is obvious from the responses of the Defendants filed prior to his motion. That motion will be denied. The Motion of Defendant Russell to Dismiss raises issues applicable to all Defendants herein and the Court, in the interest of judicial economy will not consider the Plaintiff's Complaint in its entirety on the jurisdictional basis of Rule 12(b) Fed.R.Civ.P.

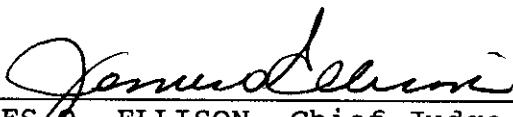
Plaintiff's cause of action pursuant to 42 U.S.C. §1985 must be dismissed because he is not a member of any class which the statute seeks to protect. See e.g., Hicks v. Resolution Trust Corp., 970 F.2d 378 (7th Cir. 1992).

Plaintiff's Section 1983 claim fails to comply with the heightened pleading prerequisites of the statute. Plaintiff has simply failed to present the factual particularity to establish a reasonable basis for concluding that evidence in support of his

allegations could be revealed through discovery. Rather, the Complaint must be characterized as a series of conclusory allegations and bold assertions. See e.g., Streetman v. Jordan, 918 F.2d 555 (5th Cir. 1990) rehearing denied, 923 F.2d 851 (1990). Assuming, arguendo, that Plaintiff's Complaint contains a sufficient quotient of factual specificity the Court finds the Complaint insufficient to overcome the qualified immunity defense to which Defendants are entitled.

Likewise, Plaintiff has failed to establish claims under the Fifth and Fourteenth Amendments to the United States Constitution. And the Court must, therefore, conclude that Plaintiff's Complaint must be dismissed.

ORDERED this 27th day of September, 1993.



JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

DATE SEP 29 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

GREGORY LEE RUCKS,
Petitioner,
vs.
RON CHAMPION, et al.,
Respondents.

No. 92-C-906-C

FILED
SEP 28 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

Respondents filed a motion to dismiss (docket #9). Petitioner has failed to file a response to the motion. Pursuant to Local Rule 15(A), Petitioner's failure constitutes a waiver of objection and a confession of the matters raised by the motion. In a prior order, the court advised Petitioner of this rule, but Petitioner still failed to respond to the matters raised by Respondents' motion. The court feels that Respondents' motion to dismiss should be granted for the reasons stated in their motion.

For all the above reasons, Respondent's motion to dismiss is **granted**, and Petitioner's action is hereby **dismissed**.

SO ORDERED THIS 28th day of Sept, 1993.


H. DALE COOK
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STEVEN WILLIAMS,
Petitioner,
vs.
R. MICHAEL CODY,
Respondent.

No. 92-C-963-C

FILED

SEP 28 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

Petitioner's "Motion to Amend the Brief in Support and Motion to Dismiss" (docket #5) is hereby denied.

SO ORDERED THIS 28th day of September, 1993.


H. DALE COOK
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON 09/29/1993
DATE SEP 29 1993

FDIC

Plaintiff(s),

vs.

DWIGHT W. MAULDING

Defendants(s).

92-C-902-C

FILED

SEP 28 1993


Richard Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ADMINISTRATIVE CLOSING ORDER

The Parties having entered into a settlement agreement, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

IF, by October 26, 1993, the Parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed⁴ with prejudice.

IT IS SO ORDERED this 28th day of September, 1993.


UNITED STATES DISTRICT JUDGE
H. DALE COOK

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED IN CIRCUIT
SEP 29 1993
DATE

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CIVIL ACTION NO. 91-C-861-C

THIRTEEN COLT, M-203,
40 MM GRENADE LAUNCHERS,
THREE MACHINEGUNS, AND
THREE FIREARMS SILENCERS

Defendants.

FILED

SEP 28 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

**JUDGMENT OF FORFEITURE
OF CERTAIN DEFENDANT PROPERTIES**

This cause having come before this Court upon Plaintiff's Application filed herein, and being otherwise fully apprised in the premises, the Court finds as follows:

The verified Complaint for Forfeiture In Rem was filed in this action on the 4th day of November 1991; the Complaint alleges that the defendant properties described on Exhibit "A" attached hereto and made a part hereof are subject to forfeiture pursuant to 18 U.S.C. §§ 1, 371, 922(a)(6) and 924(a), and 26 U.S.C. §§ 5861(d), 5861(1), 7201, and 7206(2).

The hereinafter-described defendant properties are among the properties described on Exhibit "A" attached hereto and made a part hereof, and as such were included in the Warrant of Arrest and Notice In Rem issued on November 7, 1991, by the Clerk of this Court.

The United States Marshals Service personally served a copy of the Complaint for Forfeiture In Rem and the Warrant of Arrest and Notice In Rem on the hereinafter-described defendant properties on December 6, 1991.

United States Marshals Service 285s reflecting service on the hereinafter-described defendant properties are on file herein.

United States Marshals Service 285s reflecting service on William H. Fleming, a/k/a William Hugh Fleming, on Stephen W. Scribner, a/k/a Stephen Wade Scribner, on Clayton Lee Badger, and on Don Ipo Nelson are all on file herein.

All persons interested in the hereinafter-described defendant properties, if any, were required to file their claims herein within ten (10) days after service upon them of the Warrant of Arrest and Notice In Rem, publication of the Notice of Arrest and Seizure, or actual notice of this action, whichever occurred first, and were required to file their answer(s) to the Complaint within twenty (20) days after filing their respective claims.

The hereinafter-described defendant properties, upon which personal service was effectuated more than twenty (20) days, ago have failed to file a claim or answer, as directed in the Warrant of Arrest and Notice In Rem on file herein.

No persons or entities have filed a Claim or Answer in the hereinafter-described defendant properties.

The United States Marshals Service gave public notice of this action and arrest to all persons and entities by advertisement in the Tulsa Daily Commerce & Legal News on March 18 and 25 and April 1, 1993, and that Proof of Publication was filed of record on the 15th day of April 1993.

No other claims, papers, pleadings, or other defenses have been filed by the hereinafter-described defendant properties, or any persons or entities having an interest therein.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED that Judgment be entered against, and only against, the following-described defendant properties:

- 1) One HK, MP5SD, 9mm Machinegun, 6" barrel, 18" overall length, with collapsible stock, Serial No. 7993.
- 2) One HK, MP5SD, 9mm Machinegun, 6" barrel, 18" overall Length, with collapsible stock, Serial No. 3777.
- 3) One SD Suppressor, 9mm, blue steel, 12" overall length, Serial No. 79938.
- 4) One SD Suppressor, 9mm, blue steel, 12" overall length, Serial No. 37778.

- 5) One HE Suppressor, 9mm, blue steel, 11 1/2" overall length, Serial No. Captain I,

and against all persons and/or entities, if any, having an interest in such properties, and that the defendant properties be, and the same are, hereby forfeited to the United States of America for disposition by the United States Marshal according to law, and that no right, title, or interest shall exist in any other party.


IT IS FURTHER ORDERED by the Court that the above-described machineguns and properties shall be disposed of according to law.

Entered this 28th day of September, 1993.

(Signed) H. Dale Cook

H. DALE COOK
Judge of the United States District
Court for the Northern District of
Oklahoma

APPROVED



CATHERINE J. DEPEW,
Assistant United States Attorney

CJD/ch

N:\UDD\CHOOK\FC\FLEMING\02766

EXHIBIT "A"

1. One Colt, M-203, 40mm grenade launcher, 12" barrel, 15" over all length, with sights and cleaning kit, serial number 0175967.
2. One Colt, M-203, 40mm grenade launcher, 12" barrel, 15" over all length, with sights and cleaning kit, serial number 0175556.
3. One Colt, M-203, 40mm grenade launcher, 12" barrel, 15" over all length, with sights and cleaning kit, serial number 0175519.
4. One Colt, M-203, 40mm grenade launcher, 12" barrel, 15" over all length, with sights and cleaning kit, serial number 0175856.
5. One Colt, M-203, 40mm grenade launcher, 12" barrel, 15" over all length, with sights and cleaning kit, serial number 0175957.
6. One Colt, M-203, 40mm grenade launcher, 12" barrel, 15" over all length, with sights and cleaning kit, serial number 0175518.
7. One Colt, M-203, 40mm grenade launcher, 12" barrel, 15" over all length, with sights and cleaning kit, serial number 0175873.
8. One Colt, M-203, 40mm grenade launcher, 12" barrel, 15" over all length, with sights and cleaning kit, serial number 0175917.
9. One Colt, M-203, 40mm grenade launcher, 12" barrel, 15" over all length, with sights and cleaning kit, serial number 0175458.
10. One Colt, M-203, 40mm grenade launcher, 12" barrel, 15" over all length, with sights and cleaning kit, serial number 0175921.
11. One Colt, M-203, 40mm grenade launcher, 12" barrel, 15" over all length, with sights and cleaning kit, serial number 0175845.
12. One Colt, M-203, 40mm grenade launcher, 12" barrel, 15" over all length, with sights and cleaning kit, serial number 0175539.
13. One Colt, M-203, 40mm grenade launcher, 12" barrel, 15" over all length, with sights and cleaning kit, serial number 0175492.
14. One U.S. rifle, M-14, H&R Arms Co., serial number 491246, 7.62mm caliber, blue steel, woodstock, 22" barrel, 44 1/2" over all length, with bipod and strap.
15. One HK, MP5SD, 9mm machinegun, 6" barrel, 18" over all length, with collapsible stock, serial number 7993.
16. One HK, MP5SD, 9mm machinegun, 6" barrel, 18" over all length, with collapsible stock, serial number 3777.

-2-

17. One SD suppressor, 9mm, blue steel, 12" over all length, serial number 7993S.
18. One SD suppressor, 9mm, blue steel, 12" over all length, serial number 3777S.
19. One HE suppressor, 9mm, blue steel, 11 1/2" over all length, serial number Captain I.

9/28/93

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

UNITED STATES OF AMERICA,
Plaintiff,

vs.

CALVIN CALDWELL a/k/a CALVIN
G. CALDWELL, et al.

Defendants.

SEP 27 1993
Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION NO. 92-C-179-B

**REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE
ON MOTION FOR LEAVE TO ENTER DEFICIENCY JUDGMENT**

NOW on this 15th day of September, 1993, a hearing on the Motion For Leave To Enter Deficiency Judgment was held before the Magistrate Judge on the Motion of the United States of America.

Appearing for the United States of America was Kathleen Bliss Adams, Assistant United States Attorney. The Defendants, Calvin Caldwell a/k/a Calvin G. Caldwell and Priscilla Caldwell, were not present. The United States produced to the Court, Thomas E. Allen, a certified real estate appraiser, who prepared the appraisal of the subject property, which was admitted into evidence as Government Exhibit A.

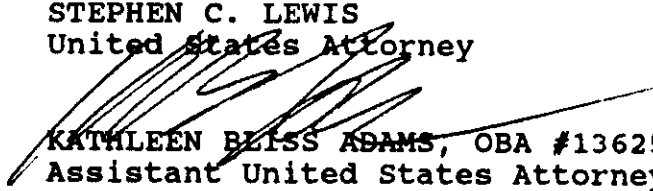
The Magistrate Judge, having considered the testimony and evidence, further finds that Plaintiff, United States of America, is accordingly entitled to a deficiency judgment against the Defendants, Calvin Caldwell a/k/a Calvin G. Caldwell and Priscilla Caldwell, in the amount of \$35,144.46, plus interest at the legal rate from date of judgment until paid.

S/JEFFREY S. WOLFE
U.S. MAGISTRATE JUDGE

UNITED STATES MAGISTRATE JUDGE

APPROVED AS TO FORM AND CONTENT:

STEPHEN C. LEWIS
United States Attorney



KATHLEEN BLISS ADAMS, OBA #13625
Assistant United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

KBA/esr

Report and Recommendation of United States Magistrate Judge
On Motion For Leave To Enter Deficiency Judgment

Civil Action No. 92-C-179-B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DATE 9/28/93

CLIFFORD VERNON HARRIS, and
REBA KATHRYN HARRIS,

Plaintiffs,

vs.

Case No. 93-C-81 B

OKLAHOMA HORSE RACING COMMISSION,
an Administrative Agency of the State
of Oklahoma; BENNY C. LOVETT,
individually, and as OHRC Director of
Law Enforcement; ROYCE HODGES,
individually, and as Chief Agent of
the OHRC Law Enforcement Division;
CLAUDE SHOBERT, individually, and
as agent of the OHRC Law Enforcement
Division; CHARLIE COX, individually,
and as Racing Steward & OHRC employee;
NORMA PRIDE-CALHOUN, individually, and
as Racing Steward & OHRC employee; and
DAVID SOUTHARD, individually, and
as Racing Steward & OHRC employee,

Defendants.

FILED

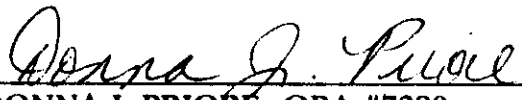
SEP 27 1993

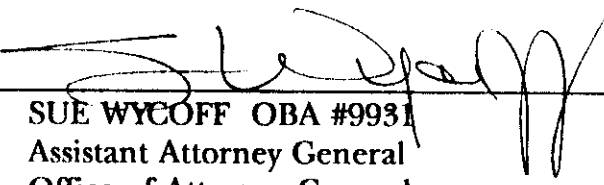
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

**STIPULATION OF DISMISSAL WITH PREJUDICE AS TO
DEFENDANT NORMA PRIDE-CALHOUN**

Pursuant to Rule 41(1.ii) of the Federal Rules of Civil Procedure the parties hereby stipulate to the Plaintiffs' dismissal with prejudice of the Defendant Norma Pride-Calhoun from this action.

So stipulated this 14th day of September, 1993.

By 
DONNA J. PRIORE OBA #7320
Birmingham, Morley, Weatherford &
Priore
1141 East 37th Street
Tulsa, Oklahoma 74105-3162
(918) 743-8355
Attorney for Plaintiffs

By 
SUE WYCOFF OBA #9931
Assistant Attorney General
Office of Attorney General
4545 North Lincoln Boulevard
Suite 260
Oklahoma City, Oklahoma 73105
(405) 521-4274
Attorney for Defendants

ENTERED ON DOCKET

DATE 9-28-93

IN THE UNITED STATES DISTRICT COURT IN AND FOR
THE NORTHERN DISTRICT OF OKLAHOMA

JOEL COOPER,

Plaintiff,

vs.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE CO., an Illinois
Insurance Company,

Defendant.

Case No. 93-C-384-E

FILED

SEP 28 1993

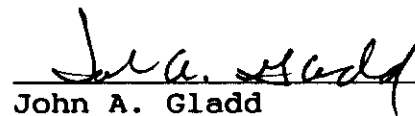
^{OF}
STIPULATION ~~FOR~~ DISMISSAL WITHOUT PREJUDICE Richard M. Lawrence, Clerk
DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

It is hereby stipulated by Plaintiff, Joel Cooper, and Defendant, State Farm Mutual Automobile Insurance Co., that the above-entitled cause brought by Plaintiff be dismissed in all respects without prejudice against the Defendant, State Farm Mutual Automobile Insurance Co., and that each party bear their own costs.

DATED this ____ day of September, 1993.



David M. Garrett, OBA #3255
Tami D. Mickelson, OBA #13400
DAVID GARRETT LAW OFFICE, P.C.
436 Court Street
Muskogee, Oklahoma 74401
(918) 683-3288
Attorney for Plaintiff



John A. Gladd
Attorney at Law
2642 East 21st, Suite 150
Tulsa, Oklahoma 74114-1739
Attorney for Defendant

ENTERED ON DOCKET

DATE 9-28-93

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 27 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

JOHN WIGGINS,

Plaintiff,

vs.

No. 93-C-0182-E

KIMBALL'S PRODUCE, INC.,
an Oklahoma corporation,

Defendant.

ORDER OF JUDGMENT

On the 10th day of September, 1993, the Court entered its Findings of Fact and Conclusions of Law and denied Plaintiff's Motion in Limine (docket #5) and Plaintiff's request for liquidated damages. The Court ordered the Plaintiff to submit an Order of Judgment reflecting his overtime wages and pre-judgment interest due for the period from March 2, 1991, to March 2, 1993.

The Court finds that Plaintiff is entitled to overtime wages in the total amount of \$4,564.93 which is computed as follows:

Warehouseman overtime from 3-02-91 to 11-30-91
837.50 hours times \$2.83 or \$2,370.13

Truckdriver overtime from 5-02-92 to 8-01-92
260 hours times \$3.54 or \$920.40

Warehouseman overtime from 8-01-92 to 12-5-92
360 hours times \$3.54 or \$1,274.40

Further the Court finds that Plaintiff is entitled to pre-judgment interest in the total amount of \$320.41 which is computed as follows:

A= $P(1+r)^t$
P= \$4,564.93 present value
1= one
r= .0345 March 1993 interest rate
t= 2 years time

A= $4564.93(1+.0345)^2$
A= $4,564.93(1.0345)^2$
A= $4,564.93(1.07019025)$
A= 4,885.34 which is 320.41 added to P

IT IS THEREFORE ORDERED ADJUDGED AND DECREED that Plaintiff is hereby granted against the Defendant a judgment in the amount of \$4,564.93 as and for his overtime wages and a judgment in the amount of \$320.41 as and for pre-judgment interest.

S/ JAMES O. ELLISON

JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT


BRENDA HEYNE,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 92-C-1184-B
)	
SERVICE AND TECHNOLOGY)	
CORPORATION)	
)	
Defendant.)	

JOINT STIPULATION FOR DISMISSAL WITH PREJUDICE

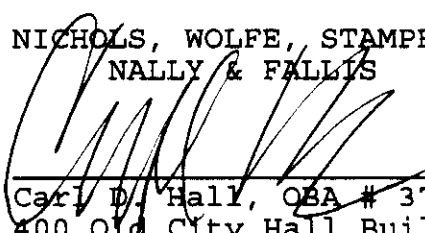
It is hereby stipulated by Sharon Womack Doty, Howard & Widdows, P.C., attorneys for Plaintiff, and Carl D. Hall, Nichols, Wolfe, Stamper, Nally & Fallis, attorneys for Defendant, that Plaintiff Complaint against Defendant will be Dismissed with prejudice and that each side agrees to pay their own attorney's fees and costs associated with this matter.

Respectfully submitted,

HOWARD AND WIDDOWS, P.C.

By: 
Sharon Womack Doty, OBA #14462
2021 South Lewis, Suite 470
Tulsa, Oklahoma 74104
(918) 744-7440
Attorneys for Plaintiff

NICHOLS, WOLFE, STAMPER,
NALLY & FALLIS

By: 
Carl D. Hall, OBA # 3716
400 Old City Hall Building
124 East Fourth Street
Tulsa, OK 74103
(918) 584-5182
Attorneys for Defendant

DATE SEP 27 1993IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ATLANTIC RICHFIELD COMPANY,

Plaintiff,

v.

AMERICAN AIRLINES, INC., Et.,
Al.,

Defendants.

Consolidated

89-C-868-B

89-C-896-B

90-C-859-B

FILED
 SEP 24 1993
 Richard M. Lawrence, Clerk
 U.S. DISTRICT COURT
 NORTHERN DISTRICT OF OKLAHOMA

ORDER DETERMINING GOOD FAITH OF SETTLEMENT

Now on this 23rd day of ~~August~~ ^{Sept}, 1993, this matter comes on for consideration of the Plaintiff Atlantic Richfield Company's (ARCO'S) NOTICE OF MOTION AND MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT (docket no. 656) filed herein on March 4, 1993. The Plaintiff ARCO appears by its attorney, Larry Gutterridge, the Defendants appears by their respective lead counsel, and William Anderson appears as liaison counsel. The Court having examined the files and records and proceedings herein, having reviewed and considered the terms and conditions of the settlements in question, having reviewed and considered the Magistrate's Report and Recommendation, and being fully advised and informed in the premises FINDS and ORDERS as follows:

1. The Magistrate's Report and Recommendation pertaining the hearing on March 19, 1993, should be and is approved.

2. The Settlements encompassed by the Notice of Motion and Motion for Determination of Good Faith Settlement (docket no. 656) in the above captioned action between the Plaintiff ARCO, and

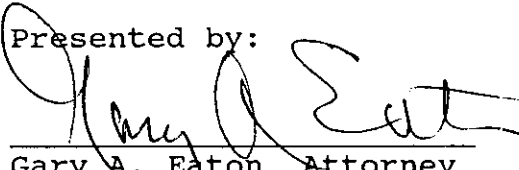
Defendants Cecil Lawson, Cecil Lawson Buick-Cadillac, Inc., Jim Norton Buick, Inc., Nassif Buick Co., Inc., A.J. Nassif, Northcutt Chevrolet Buick Co., Milo Gordon Chrysler Plymouth Inc., Oba Carner; Premier Pontiac, Inc., Roger Stich, Sober Brothers, Inc., Spraker Volkswagen, Inc., Don Thornton Ford, Inc., and Dean Bailey Olds, Inc. ("Settling Parties"), are found to have been entered into in good faith, and all claims against the Settling Parties for liabilities associated with the Site are barred under state and federal law, except to the extent that such claims are preserved by the Settlements.

Dated: Sept. 13, 1993


S/ THOMAS R. BRETT

Thomas R. Brett
United States District Court Judge

Presented by:



Gary A. Eaton, Attorney
for Plaintiff, Atlantic
Richfield Company



William Anderson, Esq.
Liaison Counsel

ENTERED ON DOCKET
DATE SEP 27 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 27 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

JANET ELAINE JONES,

Plaintiff,

vs.

No. 91-C-700-E

WAL-MART STORES, INC.,
a Delaware Corporation;
LISA D. CASSADY; and,
ROGER FOSTER;

Defendants.

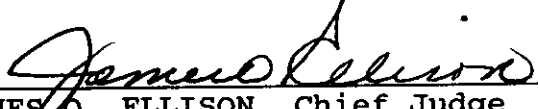
O R D E R

COMES NOW BEFORE THE COURT FOR CONSIDERATION the Plaintiff's motion to remand, or in the alternative to dismiss this action (docket #72), and Defendant's objections thereto. For the reasons stated below, Plaintiff's motion to remand is granted.

On September 1, 1993, this Court entered an order granting Defendant's motion for partial summary judgment, dismissing Plaintiff's claims asserted under the United States Code, title 42, § 1983. At that point, only state claims remained in this action. On August 31, 1993, Defendant's filed a motion seeking to disqualify Plaintiff's counsel on the grounds that one of the theories in support of their summary judgment motion created a conflict of interest between the individual defendants, Lisa D. Cassady and Roger Foster, and the corporate defendant, Wal-Mart Stores, Inc. Because this Court did not rely on the particular theory espoused by defendants (respondeat superior) which would have created such a conflict, this Court finds that the motion to disqualify is now moot.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that this action is hereby removed from the calendar of this court, and is remanded to state court, AND further that the motion to disqualify is hereby rendered moot.

ORDERED this 23^d day of September, 1993.



JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

ENTERED ON DOCKET
SEP 27 1993

DATE
FILED

SEP 27 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
ONE PARCEL OF REAL PROPERTY,)
WITH BUILDINGS, APPURTENANCES,)
IMPROVEMENTS, AND CONTENTS,)
KNOWN AS 9520 SOUTH 193RD)
EAST AVENUE, BROKEN ARROW,)
TULSA COUNTY, OKLAHOMA;)
)
and)
)
ONE PARCEL OF REAL PROPERTY)
WITH BUILDINGS, APPURTENANCES,)
IMPROVEMENTS, AND CONTENTS,)
KNOWN AS 10241 SOUTH 215TH)
EAST AVENUE, BROKEN ARROW,)
WAGONER COUNTY, OKLAHOMA;)
)
Defendants.)

No. 89-C-542-E

ORDER AND JUDGMENT

COMES NOW before the Court the Motion for Summary Judgment of the United States of America (docket #33). The only remaining claimant to the Defendant real property is one Mario Garcia-Emanuel (hereinafter Mario Garcia). For the reasons stated herein, said motion is granted.

The undisputed facts pertinent to this matter are as follows. Mario R. Garcia Emanuel was indicted on August 9, 1990 by a Northern District of Oklahoma grand jury in case number 90-CR-92-B. A superseding indictment was returned by the same grand jury on October 4, 1990, alleging one count of conspiracy to possess with intent to distribute cocaine, one count of continuing criminal

narcotics enterprise, five counts of income tax evasion, one count of conspiracy to launder drug proceeds in violation of 18 U.S.C. § 371, and seventeen counts of money laundering in violation of 18 U.S.C. § 1956(a)(1)(B)(i). Mario Garcia plead not guilty. On April 1, 1991, Mario Garcia was found guilty by a jury of all twenty-five counts of the superseding indictment.

On August 1, 1991, upon motion of the defendant, the trial court entered a judgment of acquittal as to Counts eight through twenty-five (relating to the conspiracy to launder drug proceeds, and the money laundering). On August 19, 1991, Mario Garcia was sentenced on Counts one, two, six, and seven to two-hundred ninety-two (292) months' custody with the Bureau of Prisons, five years of supervised release, and \$350.00 special monetary assessment; to run concurrently with a sentence on Counts three, four, and five (relating to the three non-guideline income tax counts) five years' custody with the Bureau of Prisons, and \$150.00 special monetary assessment. The Judgment and Commitments on the above counts were entered on August 20, 1991.

On June 30, 1989, Plaintiff timely filed this complaint for Forfeiture in Rem alleging that the real property and contents identified above were subject to seizure and forfeiture. On July 21, 1989, Plaintiff filed its Notice of Dismissal as to contents valued at less than \$1,000.00. Thereafter, on June 14, 1990, Plaintiff filed its Notice of Dismissal as to the Defendant 1988 Ford 350 Pickup. On July 4, 1989, Mario and Marina Garcia filed a joint claim against the Defendant real property. On August 14,

1989, Mario and Marina Garcia filed their answer to the complaint herein. On July 10, 1991, this Court entered an Order striking the claim of Marina Garcia, applying the fugitive from justice doctrine. Mario Garcia at this stage is the only remaining claimant to the Defendant real properties.

Based on the evidence presented by Plaintiff, the Court finds as follows. The Government seeks forfeiture of the two parcels of real property pursuant to Title 221 of the United States Code, § 881(a)(6) and (7), which provides that the following shall be subject to forfeiture to the United States of America:

(6) All real property, including any right, title, and interest in the whole of any lot or tract of land and any appurtenances or improvements, which is used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of this title punishable by more than one year's imprisonment, except that no property shall be forfeited under this paragraph, to the extent of an interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

(7) All moneys furnished or intended to be furnished by any person in exchange for a controlled substance in violation of this sub chapter, all proceeds traceable to such an exchange, and all moneys ... used or intended to be used to facilitate any violation of this subchapter.

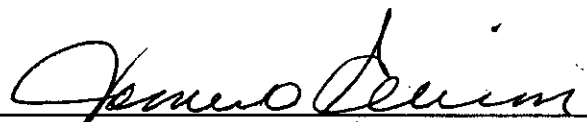
The government bears the initial burden of showing probable cause for the institution of the suit, then the burden shifts to the claimant to prove by a preponderance of the evidence that the property at issue is not so connected to a narcotics transaction so as to be subject to forfeiture. United States v. \$2,500 in United States Currency, 689 F.2d 10, 12 (2nd Cir. 1982), cert. denied, --- U.S. ---, 104 S.Ct. 1591, 80 L.Ed.2d 123 (1984). If the Claimant cannot raise the appropriate defenses, then summary judgment may be

granted in favor of the government solely upon the basis of the showing of probable cause. United States v. 4492 S.Livonia Rd, Livonia, New York, 889 F.2d 1258, 1267 (2nd Cir. 1989).

The Court finds from all of the evidence submitted that the Plaintiff had probable cause to seize the Defendant real properties and the Claimant Mario Garcia is unable to prove by a preponderance of the evidence that the Defendant properties were not used to facilitate the commission of felony violations of the Controlled Substances Act, 21 U.S.C. § 801 et seq. and proceeds of the drug business. Because a showing of probable cause, if not rebutted, will alone support a forfeiture, United States v. Little Al, 712 F.2d 133, 136 (5th Cir. 1983), the Plaintiff is entitled to judgment dismissing the claim of Claimant Mario Garcia as a matter of law.

The Court having reviewed the pleadings and filings in this action, finds that no material issues of fact exist to be litigated and that judgment should be entered as a matter of law in favor of Plaintiff. Celotex v. Catrett, 106 S.Ct. 2548 (1986).

SO ORDERED, ADJUDGED AND DECREED this 27th day of September, 1993.


JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

ENTERED ON DOCKET

DATE 9-27-93

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 27 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

In re)

HOME-STAKE PRODUCTION COMPANY)
SECURITIES LITIGATION)

Ivan Anixter, et al.,)

Plaintiffs,)

v.)

Home-Stake Production Co., et al.,)

Defendants.)

M.D.L. Do
No. 153

73-C-382 and 73-C-377
(Consolidated)

ORDER AND FINAL
JUDGMENT

A Stipulation of Settlement having been entered into by the parties herein on June 29, 1993, and the Court having found the terms of the Stipulation of Settlement to be fair, reasonable and adequate, and the Court having expressly determined that there is no just reason for delay in the entry of final judgment, and that a final judgment should be entered as, and be deemed, a final judgment in accordance with Fed.R.Civ.P. 54(b),

And defendants Wynema Anna Cross, Executrix of the Estate of Norman C. Cross, Jr., Cross and Company, E. M. Kunkel, and K&E, Inc., and the related released persons, entities, and organizations defined in the Stipulation of Settlement, hereinafter the "Settling Defendants," having expressly denied any liability and any wrongdoing of any description or any deficiencies, faults, errors or omissions of any nature whatsoever; having entered into the Stipulation of Settlement solely for the purpose

of terminating this litigation with the Settling Plaintiffs (as defined in the Stipulation of Settlement), and to avoid the cost, expense and effort required to continue to participate in such complex and protracted litigation; and not admitting or conceding the validity of any of the claims asserted against them, any liability to any of the plaintiffs or others, or any wrongdoing, deficiencies, faults, errors or omissions of any nature whatsoever,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. The judgments previously entered in this Court on November 16, 1989, in this action against Cross, Cross and Company, and K&E in favor of Beatrice Warren and the members of the 1971 Home-Stake Program class, in favor of Joseph D. Bennett and the members of the 1972 Home-Stake Program class, and any other person having a beneficial interest in the claims asserted by them, and interest thereon, are hereby vacated in their entirety, and the claims dismissed with prejudice.

2. The judgments previously entered in this Court on November 16, 1989, in this action against Kunkel in favor of Thomas H. Thorner and members of the 1969 Home-Stake Program class and William Grohne and members of the 1970 Home-Stake Program class, and any other person having a beneficial interest in the claims asserted by them, and interest thereon, are hereby vacated in their entirety and the claims dismissed with prejudice.

3. \$237,251 of the \$390,561 judgment for Costs taxed against all defendants jointly and severally in favor of the Settling Plaintiffs, together with interest thereon, are hereby

satisfied and the outstanding judgment for Costs shall be reduced by that amount to \$153,310, as allocated to the various classes in Section 3.6 of the Stipulation of Settlement, the satisfied portion of that judgment is vacated and the claims with respect thereto are dismissed with prejudice, and the liabilities therefor are extinguished.

4. The Garnishment Judgments previously entered in this Court on February 19, 1991, against the Settling Insurers (American Home Assurance Company, Continental Casualty Company, and Federal Insurance Company), in favor of the 1971 and 1972 Home-Stake Program classes, and any other person having a beneficial interest in the claims asserted by them, and the Costs judgment against the Settling Insurers in favor of the 1969 through 1972 classes, are hereby satisfied, the judgments and interest thereon are vacated, the claims with respect thereto are dismissed with prejudice, and the liabilities therefor are extinguished.

5. All claims asserted or which could have been asserted in the above-captioned action by or on behalf of the Settling Plaintiffs against Cross, Cross and Company, and K&E relating to the purchase or other acquisition, ownership or retention of units in the 1971 or 1972 Home-Stake Programs are hereby dismissed with prejudice, all parties to bear their own costs.

6. All claims asserted or which could have been asserted in the above-captioned action by or on behalf of the Settling Plaintiffs against Kunkel relating to the purchase or other acquisition, ownership or retention of units in the 1969 or 1970

Home-Stake Programs are hereby dismissed with prejudice, all parties to bear their own costs.

7. To the extent that any Settling Defendant has asserted or presently is asserting a claim, counterclaim or cross-claim for contribution and/or indemnification against any plaintiff or party to this action as against whom any action consolidated under M.D.L. Docket No. 153 was previously dismissed with prejudice pursuant to a settlement with the plaintiffs, or to the extent that any such previously dismissed party has asserted or is presently asserting a counterclaim or cross-claim for contribution and/or indemnification against any Settling Defendant, such claims, counterclaims or cross-claims are hereby dismissed with prejudice, each party to bear its own costs, except that any such claims, counterclaims or cross-claims asserted by Kunkel with respect to the 1964 through 1966 Home-Stake Programs are dismissed without prejudice.

8. Jurisdiction is hereby reserved by the Court over the consummation of the compromise and settlement provided for in the Stipulation of Settlement and all matters related thereto.

Dated: Tulsa, Oklahoma
Sept 27, 1993

S/ JAMES O. ELLISON

United States District Judge

JUDGMENT ENTERED:

9/27/93
Clerk

FILED
U.S. DISTRICT COURT
TULSA, OKLA.
By DM Cullough
Deputy Clerk

ENTERED ON DOCKET

DATE 9-27-93

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

In re

HOME-STAKE PRODUCTION COMPANY
SECURITIES LITIGATION

M.D.L. Docket
No. 153

74-C-180
74-C-230

ORDER AND FINAL
JUDGMENT

FILED
SEP 22 1993
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

A Stipulation of Settlement having been entered into by the parties herein on June 29, 1993, and the Court having expressly determined that there is no just reason for delay in the entry of final judgment, and that a final judgment should be entered as, and be deemed, a final judgment in accordance with Fed.R.Civ.P. 54(b); and

Wynema Anna Cross, Executrix of the Estate of Norman C. Cross, Jr. ("Cross"), and E. M. Kunkel ("Kunkel") (collectively the "Settling Defendants"), having expressly denied any liability and any wrongdoing of any description or any deficiencies, faults, errors or omissions of any nature whatsoever; having entered into the Stipulation of Settlement solely for the purpose of terminating this litigation as to them and to avoid the cost, expense and effort required to continue to participate in such complex and protracted litigation; and not admitting or conceding the validity of any of the claims asserted against them, any liability to any

U.S. District Court)
Northern District of Oklahoma) SS
I hereby certify that the foregoing
is a true copy of the original on file
in this Court.

Richard M. Lawrence, Clerk

Ry B.M. Cullough
Deputy Clerk

of the plaintiffs or others, or any wrongdoing, deficiencies, faults, errors or omissions of any nature whatsoever,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. The judgments previously entered in this Court on November 16, 1989, in Case No. 74-C-180 against Kunkel and in Case No. 74-C-230 against Cross in favor of Plaintiffs, including interest thereon, are hereby vacated in their entirety.

2. The judgments entered in this Court on February 19, 1991, in these actions against the insurers of the Settling Defendants, Continental Casualty Company, American Home Assurance Company, and Federal Insurance Company, including interest thereon, are hereby vacated in their entirety to the extent based on the judgments vacated in paragraph 1 above.

3. The complaints in Case No. 74-C-180 against Kunkel and Case No. 74-C-230 against Cross are hereby dismissed with prejudice in their entirety, each party to bear its own costs.

4. To the extent that Cross in Case No. 74-C-230 or Kunkel in Case No. 74-C-180 has asserted or presently is asserting a counterclaim or cross-claim against any plaintiff or party to these actions as against whom any action consolidated under M.D.L. Docket No. 153 was previously dismissed with prejudice pursuant to a settlement with the plaintiffs, or to the extent that any such previously dismissed party has asserted or is presently asserting a counterclaim or cross-claim against Cross or Kunkel, such counterclaims or cross-claims are hereby dismissed with prejudice, each party to bear its own costs.

5. Jurisdiction is hereby reserved by the Court over the consummation of the compromise and settlement provided for in the Stipulation of Settlement and all matters related thereto.

Dated: Tulsa, Oklahoma
_____, 1993

S/ JAMES O. ELLISON

JUDGMENT ENTERED:

United States District Judge

9/27/93
Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ATLANTIC RICHFIELD COMPANY,)	
)	
Plaintiff,)	Consolidated Cases Nos.
)	
v.)	89-C-868-B
)	89-C-896-B
AMERICAN AIRLINES, INC., Et.,)	90-C-859-B
Al.,)	
)	
Defendants.)	

FINAL JUDGMENT AND ORDER OF DISMISSAL WITH PREJUDICE

Now on this 23rd day of Sept., 1993, this matter comes on for consideration of the Plaintiff Atlantic Richfield Company's ("ARCO") NOTICE OF MOTION AND MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT (docket no. 656) filed herein on March 4, 1993. The Plaintiff ARCO appears by its attorney, Larry Gutterridge, the Defendants appears by their respective lead counsel, and William Anderson appears as liaison counsel. The Court having examined the files and records and proceedings herein, having reviewed and considered the terms and conditions of the settlements in question, having reviewed and considered the Magistrate's Report and Recommendation, and being fully advised and informed in the premises FINDS and ADJUDGES, ORDERS and DECREES:

1. The settlements encompassed by the Notice of Motion and Motion for Determination of Good Faith Settlement (docket no. 656) in the above captioned action between the Plaintiff ARCO and Defendants Cecil Lawson, Cecil Lawson Buick-Cadillac, Inc., Jim Norton Buick, Inc., Nassif Buick Co., Inc., A.J. Nassif, Northcutt Chevrolet Buick Co., Milo Gordon Chrysler Plymouth Inc., Oba Carner; Premier Pontiac, Inc., Roger Stich, Sober Brothers, Inc.,

Spraker Volkswagen, Inc., Don Thornton Ford, Inc., and Dean Bailey Olds, Inc. ("Settling Parties"), are found to be in good faith, and a final judgment barring all claims against the Settling Parties associated with the Site under state and federal law, except to the extent that such claims are preserved by the settlements, and except for any claims for arranging for disposal of off-site hazardous substances, should be and is hereby entered.

2. Each and every claim asserted by the Plaintiff ARCO against the Settling Parties should be and is hereby dismissed in its entirety on the merits, with prejudice and without costs.

3. Each and every claim "deemed filed" by or against the Settling Parties pursuant to the terms of the First Amended Case Management Order, Section VII.B., filed March 6, 1992, is hereby dismissed in its entirety on the merits, with prejudice and without costs.

4. In accordance with the terms of the agreements with the Settling Parties hereinafter referred to as the Agreement, this Judgment shall be conditioned upon the Agreement being and remaining valid and in effect.

5. Entry into the Agreement by an ineligible entity renders the Agreement null and void. An eligible entity is a generator or transporter, or both, of material to the Site, with a volume of less than or equal to 100,000 gallons.

6. Any breach, whether by omission or commission, whether intentional or non-intentional, of a Settling Party's representation and warranty that, it neither possesses, or has a right to possess, nor is aware of any information which indicates that it is responsible for additional or greater volume than is set

forth in the Volume Report attached to the Agreement, which has not been included in the documentation provided to ARCO in support of its offer to enter the Agreement, renders the Agreement null and void.

7. In the event that the Agreement is or becomes null and void, this Judgment along with all orders entered in conjunction with the Agreement shall be vacated nunc pro tunc, the settlement reflected in the Agreement shall be terminated pursuant to its terms and the parties to the vacated Agreement shall be deemed to have reverted to their respective status and position in the Action as of the date immediately prior to the execution of the Agreement.

8. Nothing contained in this Judgment and Order shall be construed to affect the rights of the Plaintiff ARCO or the Settling Parties with respect to claims which are preserved by the settlements.

9. There being no just reason to delay the entry of this Judgment, this Court hereby directs entry of a Final Judgment

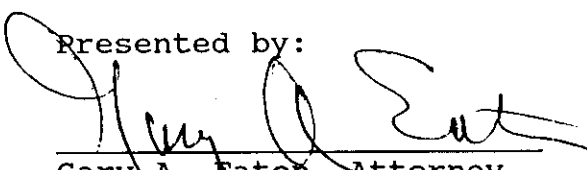
and Order of Dismissal pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

Dated: Sept. 1993


S/ THOMAS R. BRETT

Thomas R. Brett
United States District Court Judge

Presented by:



Gary A. Eaton, Attorney
for Plaintiff, Atlantic
Richfield Company



William Anderson, Esq.
Liaison Counsel

DATE SEP 27 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ATLANTIC RICHFIELD COMPANY,)
)
Plaintiff,)
)
v.)
)
AMERICAN AIRLINES, INC., Et.,)
Al.,)
)
Defendants.)

Consolidated Cases Nos.

89-C-868-B

89-C-896-B

90-C-859-B

FILED

SEP 27 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER DETERMINING GOOD FAITH OF SETTLEMENT

Now on this 23rd day of Sept., 1993, this matter comes on for consideration of the Plaintiff Atlantic Richfield Company's (ARCO'S) NOTICE OF MOTION AND MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT FOR SETTLEMENT BETWEEN ARCO AND OKLAHOMA STATE UNIVERSITY (docket no. 696) filed herein on April 1, 1993. The Plaintiff ARCO appears by its attorney, Larry Gutierrez, the Defendants appears by their respective lead counsel, and William Anderson appears as liaison counsel. The Court having examined the files and records and proceedings herein, having reviewed and considered the terms and conditions of the settlement in question, having reviewed and considered the Magistrate's Report and Recommendation, and being fully advised and informed in the premises FINDS and ORDERS as follows:

1. The Magistrate's Report and Recommendation pertaining the hearing on April 16, 1993, should be and is approved.

2. The Settlement encompassed by the Notice of Motion and Motion for Determination of Good Faith Settlement For

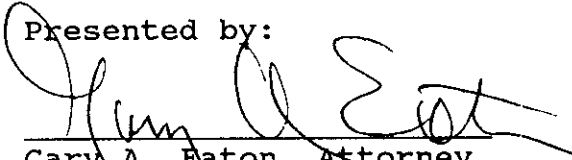
Settlement Between ARCO and Oklahoma State University (docket no. 696) in the above captioned action is found to have been entered into in good faith, and all claims against the Settling Party for liabilities associated with the Site are barred under state and federal law, except to the extent that such claims are preserved by the Settlement.

S/ THOMAS R. BRETT

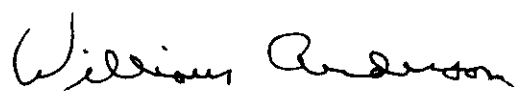
Dated: Sept. 23rd

Thomas R. Brett
United States District Court Judge

Presented by:



Gary A. Eaton, Attorney
for Plaintiff, Atlantic
Richfield Company



William Anderson, Esq.
Liaison Counsel

DATE SEP 27 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ATLANTIC RICHFIELD COMPANY,)
)
Plaintiff,)
)
v.)
)
AMERICAN AIRLINES, INC., Et.,)
Al.,)
)
Defendants.)
_____)

Consolidated Cases Nos.

89-C-868-B

89-C-896-B

90-C-859-B

FILED
SEP 21 1993
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

FINAL JUDGMENT AND ORDER OF DISMISSAL WITH PREJUDICE

Now on this 23rd day of Sept, 1993, this matter comes on for consideration of the Plaintiff Atlantic Richfield Company's ("ARCO") NOTICE OF MOTION AND MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT FOR SETTLEMENT BETWEEN ARCO AND OKLAHOMA STATE UNIVERSITY (docket no. 696) filed herein on April 1, 1993. The Plaintiff ARCO appears by its attorney, Larry Gutterridge, the Defendants appears by their respective lead counsel, and William Anderson appears as liaison counsel. The Court having examined the files and records and proceedings herein, having reviewed and considered the terms and conditions of the settlement in question, having reviewed and considered the Magistrate's Report and Recommendation, and being fully advised and informed in the premises FINDS and ADJUDGES, ORDERS and DECREES:

1. The settlement encompassed by the Notice of Motion and Motion for Determination of Good Faith Settlement for Settlement Between ARCO and Oklahoma State University (docket no. 696) in the above captioned action is found to be in good faith, and a final judgment barring all claims against Defendant Oklahoma State University associated with the Site under state and federal

law, except to the extent that such claims are preserved by the settlement, and except for any claims for arranging for disposal of off-site hazardous substances, should be and is hereby entered.

2. Each and every claim asserted by the Plaintiff ARCO against Defendant Oklahoma State University should be and is hereby dismissed in its entirety on the merits, with prejudice and without costs.

3. Each and every claim "deemed filed" by or against Defendant Oklahoma State University pursuant to the terms of the First Amended Case Management Order, Section VII.B., filed March 6, 1992, is hereby dismissed in its entirety on the merits, with prejudice and without costs.

4. In accordance with the terms of the agreement with Defendant Oklahoma State University hereinafter referred to as the Agreement, this Judgment shall be conditioned upon the Agreement being and remaining valid and in effect.

5. Entry into the Agreement by an ineligible entity renders the Agreement null and void. An eligible entity is a generator or transporter, or both, of material to the Site, with a volume of less than or equal to 100,000 gallons.

6. Any breach, whether by omission or commission, whether intentional or non-intentional, of Oklahoma State University's representation and warranty that, it neither possesses, or has a right to possess, nor is aware of any information which indicates that it is responsible for additional or greater volume than is set forth in the Volume Report attached to the Agreement, which has not been included in the documentation

provided to ARCO in support of its offer to enter the Agreement, renders the Agreement null and void.

7. In the event that the Agreement is or becomes null and void, this Judgment along with all orders entered in conjunction with the Agreement shall be vacated nunc pro tunc, the settlement reflected in the Agreement shall be terminated pursuant to its terms and the parties to the vacated Agreement shall be deemed to have reverted to their respective status and position in the Action as of the date immediately prior to the execution of the Agreement.

8. Nothing contained in this Judgment and Order shall be construed to affect the rights of the Plaintiff ARCO or Defendant Oklahoma State University respect to claims which are preserved by the settlement.

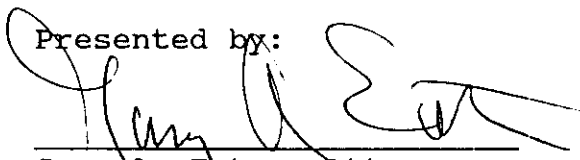
9. There being no just reason to delay the entry of this Judgment, this Court hereby directs entry of this final Judgment and Order of Dismissal pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

Dated: Sept. 1993


S/ THOMAS R. BRETT

Thomas R. Brett
United States District Court Judge

Presented by:



Gary A. Eaton, Attorney
for Plaintiff, Atlantic
Richfield Company



William Anderson, Esq.
Liaison Counsel

ENTERED IN DOCKET
DATE SEP 24 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

LOYAL TAYLOR, d/b/a TAYLOR
FREIGHT AGENCY, and UFO
CONTRACTING,

V.

SUPERIOR EXPRESS SERVICE, INC.
a foreign corporation, and
TRANS-OHIO HAULERS, INC. a
foreign corporation,

CASE NO. 91-C-840-B ✓

FILED

SEP 24 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

This matter came on for pre-trial conference this date. The Court considered Plaintiff's Motion For Order Allowing Voluntary Dismissal (#27) wherein Plaintiff seeks to dismiss as a defendant herein Trans-Ohio Haulers, Inc. and further seeks to dismiss three causes of action, Count IV - Intentional Injury to Plaintiff's Business Reputation, Count V - Fraud In the Inducement To Sign Contract, Count VI - Petition For Declaratory Judgment.

The Court concludes Plaintiff's Motion should be and the same is hereby GRANTED.

IT IS SO ORDERED, this 24 day of September, 1993.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

37

SEP 24 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

TIM D. MAUK, an individual,)
)
Plaintiff,)
)
vs.)
)
THE CITY OF BARTLESVILLE,)
TIM SHIVELY, individually and)
as an officer of the)
Bartlesville Police)
Department, EDDIE VIRDEN,)
individually and as an)
officer of the Bartlesville)
Police Department, DAVID)
EMBRY, individually and as an)
officer of the Bartlesville)
Police Department, RICK)
SILVER, individually and)
as an officer of the)
Bartlesville Police Depart-)
ment, ERIC PETERSON,)
individually and as an officer)
of the Bartlesville Police)
Department,)
)
Defendants.)

Case No. 93-C-407 B

FILED
SEP 23 1993
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER OF DISMISSAL WITH PREJUDICE
AS TO DEFENDANT, THE CITY OF BARTLESVILLE

Upon Stipulation of the parties, the Court FINDS that an Order of Dismissal should be entered as to the Defendant, The City of Bartlesville.

IT IS THEREFORE ORDERED that the Complaint and Amended Complaint of Tim D. Mauk against the Defendant, The City of Bartlesville, is hereby dismissed with prejudice, and that each party is responsible for their own costs and attorney fees incurred herein.

/s/ THOMAS R. BRETT

Honorable Thomas Brett
United States District Court Judge

APPROVED AS TO FORM AND CONTENT:

THE BRIGGS LAW OFFICE

By: 

Robert L. Briggs, OBA #10215
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Tulsa, OK 74103

Attorneys for Plaintiff

JON B. COMSTOCK & ASSOCIATES

By: 

Jon B. Comstock, OBA #1836
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(918) 583-0193

Attorney for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JACK D. PETTY,

Plaintiff,

vs.

CITY OF BIXBY and ROBIN
SPRINGER, Individually,

Defendants.

Case No. 92-C-264-B

ORDER OF DISMISSAL WITH PREJUDICE

NOW ON this 23rd day of Sept., 1993, it appearing to the
Court that this matter has been compromised and settled, this case is
herewith dismissed with prejudice to the refiling of a future action.

S/ THOMAS R. BRETT

United States District Judge

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SEP 24 1993
FILED
SEP 23 1993
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ENTIRE CONTENTS
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ENTERED IN COURT
SEP 24 1993
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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

TIM D. MAUK, an individual,)
Plaintiff,)
vs.)
THE CITY OF BARTLESVILLE,)
TIM SHIVELY, individually and)
as an officer of the)
Bartlesville Police)
Department, EDDIE VIRDEN,)
individually and as an)
officer of the Bartlesville)
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Bartlesville Police Depart-)
ment, ERIC PETERSON,)
individually and as an officer)
of the Bartlesville Police)
Department,)
Defendants.)

Case No. 93-C-407 B

FILED

SEP 23 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER OF DISMISSAL WITH PREJUDICE
AS TO INDIVIDUAL DEFENDANTS TIM SHIVELY, EDDIE
VIRDEN, DAVID EMBRY, RICK SILVER, AND ERIC PETERSON

Upon Stipulation of the parties, the Court FINDS that an Order of Dismissal should be entered as to the individual Defendants.

IT IS THEREFORE ORDERED that the Complaint and Amended Complaint of Tim D. Mauk against the individual Defendants, Tim Shively, Eddie Virden, David Embry, Rick Silver, and Eric Peterson, is hereby dismissed with prejudice, and that each party is responsible for their own costs and attorney fees incurred herein.

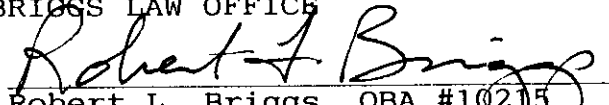
S/ THOMAS R. BRETT

Honorable Thomas Brett
United States District Court Judge

APPROVED AS TO FORM AND CONTENT:

THE BRIGGS LAW OFFICE

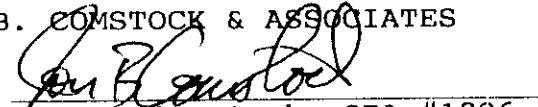
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Attorney for Defendants

ENTERED ON DOCKET
DATE SEP 23 1993

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
SEP 21 1993

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

JAMES J. CHURCH,

Plaintiff(s),

v.

LOUIS W. SULLIVAN,

Defendant(s).

92-C-712-B

ORDER

Now before the Court is an appeal by Plaintiff James J. Church of the Secretary's decision to deny him Social Security disability benefits. The general issue is whether the Administrative Law Judge ("ALJ") properly evaluated Church's alcohol problems. For the reasons discussed below, the case is **reversed**.

I. Standard of Review

Judicial review of the Secretary's decision is limited in scope by 42 U.S.C. § 405(g).¹ The undersigned's role "on review is to determine whether the Secretary's decision is supported by substantial evidence." *Campbell v. Bowen*, 822 F.2d 1518, 1521 (10th Cir. 1987). Substantial evidence must be more than a scintilla and it is "relevant evidence as a reasonable mind might deem adequate to support a conclusion." *Jordan v.*

¹ Section 405(g) reads, in part: "Any individual, after the final decision of the Secretary made after a hearing to which he was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him of notice of such decision or within such further time as the Secretary may allow...the findings of the Secretary as to any fact, if supported by substantial evidence, shall be conclusive."

Heckler, 835 F.2d 1314, 1316 (10th Cir. 1987).² The court "may not reweigh the evidence or try the issues de novo or substitute its judgment for that of the Secretary." *Pierre v. Sullivan*, 884 F.2d 799, 802 (5th Cir. 1989).

When deciding a claim for benefits under the Social Security Act, the ALJ must use the following five-step evaluation: (1) whether the claimant is currently working; (2) whether the claimant has a severe impairment; (3) whether the claimant's impairment meets an impairment listed in Appendix 1 of the relevant regulation;³ (4) whether the impairment precludes the claimant from doing his past relevant work; and (5) whether the impairment precludes the claimant from doing any work. 20 C.F.R. § 404.1520(b)-(f) (1991). Once the Secretary finds the claimant either disabled or nondisabled at any step, the review ends. *Gossett v. Bowen*, 862 F.2d 802, 805 (10th Cir. 1988).

II. Summary of Evidence/Procedural History

Church, who was born in 1945, graduated from high school and completed 100 hours of credit at the University of Tulsa.⁴ After college, he was stationed in Vietnam from 1968 to 1970 as a soldier in the United States Army. Following military service, Church spent 18 years as an insurance adjuster. *Record at pages 65,201.*

² In examining whether substantial evidence exists, the Court considers the following: (1) The ALJ's credibility findings; (2) The plaintiff's vocational factors; (3) The medical evidence from treating and consulting physicians; (4) The plaintiff's subjective complaints relating to exertional and non-exertional activities and impairments; (5) Any corroboration by third parties of the plaintiff's impairments; and (6) The testimony of vocational experts when required which is based upon a proper hypothetical question which sets forth the claimant's impairments. *Cruse v. Bowen*, 867 F.2d 1183, 1185 (8th Cir. 1989).

³ Appendix 1 is a listing of impairments for each separate body system. 20 C.F.R. Pt. 404, Subpt. P, App. 1 (1991).

⁴ He last attended college in 1967 and, according to the record, was approximately one semester short of a Bachelor's Degree in business administration.

On October 2, 1989, Church applied for Social Security disability benefits. In his application, he claimed he had not been able to work since July 15, 1987 for the following reasons: 1) post traumatic stress disorder, 2) chronic bursitis, 3) emphysema, 4) alcohol abuse; and 5) an infected prostate gland. Church's application was denied, prompting him to request a hearing before the ALJ.

The evidence submitted to the ALJ can be summarized as follows: Church began drinking when he was 14 years old and the problem became worse as he got older. One medical report stated that Church, since he turned 40, has been drinking a fifth of vodka "almost every day." He sought treatment at three rehabilitation programs, but none have been successful.⁵

Besides problems with alcohol, Church apparently has been diagnosed with Post Traumatic Stress Syndrome, (*Id.* at 261, 269⁶) dating back to his experience in Vietnam. Dr. Charles Cobb, a psychiatrist who examined Church on May 26, 1989, stated he believed the Syndrome prevented him from working full-time. Dr. Cobb wrote:

This [the mental examination] revealed a 43 year old male who was alert, oriented to time, person and place and showed no memory defects. His attention and concentration were adequate and his intellectual functioning appears average...His content is without delusions or paranoid ideations but he continues to be obsessed and show intrusive thoughts regarding Vietnam...The diagnosis of Post Traumatic Stress Syndrome (delayed type)

⁵ Church's trips to alcohol rehabilitation programs are well documented. On March 4, 1988, he was admitted to a treatment center in Little Rock, Arkansas. *Id.* at 261. On May 26, 1989, Church again sought treatment. During that treatment, Dr. Charles Cobb wrote: "It [Church's] drinking appears to have worsened significantly over the past years. At this point in time the severity of the symptoms are severe enough as to markedly inhibit his [Church's] interpersonal and occupational functions...would be judged to be so severely impaired by his symptoms as to not be able to handle full time employment." *Id.* at 269. On March 13, 1990, he was discharged from another treatment program "with advice to abstain from alcohol and attend local AA meetings." *Id.* at 325. Also, see *Record* at pages 274-291, 323 and 345-355.

⁶ Post-traumatic Stress Syndrome is a type of disorder that can cause both psychological and physical problems for individuals who have suffered a "psychologically distressing event." See, DSMIII-R, 3rd Edition (1987). Dr. Cobb confirmed the diagnosis, but it is unclear which doctor made the initial diagnosis.

is continued. It appears to have worsened significantly over the past years. At this point in time the severity of the symptoms are severe enough as to markedly inhibit his interpersonal and occupational functioning. *Id.* at 268-269.⁷

Church also has been diagnosed with chronic pulmonary disease, nicotine dependence (having smoked one to one and a half packs of cigarettes daily for 20 years), a history of "Agent Orange" exposure and chronic bursitis of left hip and right shoulder. *Id.* at 290.⁸

In addition to the foregoing, the ALJ heard testimony from Church, Church's treating physician, the Secretary's medical advisor and a Vocational Expert ("VE"). Church testified his daily activities consist of watching television, shopping, occasionally going to a movie, cleaning house and cooking. He said he could lift 40 pounds, but had problems standing for more than five to seven minutes.

Church testified that he could not work because of the following: constant pain in his left hip and right shoulder; problems breathing; a "numbness" in his left hand; tingling in his ears; and a prostrate problem. *Id.* at 115. He said he had mental problems such as distrusting others and questioning authority. *Id.* at 126. He admitted excessive drinking, but said: "I don't think...my problems are particularly related to alcohol." *Id.* at 132.

The second witness to testify was Dr. W.R. Reid. Dr. Reid, Church's treating physician and a psychiatrist who is the medical director of a local treatment program, testified that Church suffers from alcohol dependence and post-traumatic stress syndrome.

⁷ Another doctor described Church as having a "severe obsession of his experiences" in Vietnam. *Id.* at 290.

⁸ For a more in-depth view of the medical evidence presented, see Record at pages 9-28 and Defendant's Brief.

Id. at 138. Dr. Reid, who said he believed Church was "dying from alcoholism", also testified that Church was disabled. *Id. at 139, 148.*⁹ Dr. Reid further testified:

I think his relationships with people, as he described it, is very restrictive. He can't seem to engage in any kind of a meaningful interaction. Especially he can't handle any kind of confrontation. He's very paranoid and aggravated, and starts thinking the person is a Viet Cong or something if there is any disagreement. His lifestyle has been totally restricted. *Id. at 141-142.*

A third witness, Dr. Thomas Goodman, challenged Dr. Reid's conclusions. Dr. Goodman, the Secretary's medical advisor, testified that he did not find Church to be disabled. Dr. Goodman also raised the question whether "alcoholism" was an illness. *Id. at 160.*¹⁰ Dr. Goodman also stated that Church "continues to drink, rather large quantities" and that his denial was "massive". *Id. at 161.* In response to the ALJ's question, Dr. Goodman said that Church could work at a sedentary or light job if he were sober. *Id. at 170.*

The last witness to testify at the hearing was Vocational Expert Charles Hunter. Hunter, in response to the ALJ's hypothetical question, stated that Church could work as a record or mail clerk. *Id. at 181-182.* The ALJ's hypothetical question, however, did not include Church's alcohol problems.¹¹

⁹ Reid said Church meets listings 12.06 and 12.09. That finding conflicted with the testimony of the Secretary's medical advisor.

¹⁰ Throughout Dr. Goodman's testimony, the issue of alcoholism and to what extent it was (or should be) acknowledged as an illness was discussed. Such statements muddled the testimony as it was unclear as to whether Dr. Goodman was analyzing Church's specific circumstances or the general problem of alcoholism.

¹¹ Church's representative asked Hunter the following question: "If a person consumed alcohol so that he was drunk approximately five days a week, would that interfere with his ability to perform these jobs?" Replied Hunter: "Absolutely." *Id. at 184.*

Following the hearing, the ALJ concluded that Church was not disabled and could return to his past relevant work as a claims adjuster. In reaching that decision, the ALJ discounted part of Dr. Reid's testimony because "Dr. Reid...based his opinions, almost entirely, on the claimant's subjective statements." *Id.* at 26.¹² Furthermore, the ALJ found that Church's subjective complaints were not credible. The ALJ then wrote:

Comparison of the job requirements, both physical and mental, of the claimant's past relevant work as insurance claim adjuster as he sets them out in his vocational report, with the claimant's above residual functional capacity reveals that it is reasonable to conclude that the claimant retains the residual functional capacity to...work as a claim adjuster. The evidence does not reflect that the claimant cannot control his drinking; in fact, the claimant specifically testifies that his drinking does not keep him from working. Instead, the claimant complains he has mental problems, especially trouble with authority. The claimant was subjected to extended questioning by the ALJ during the long hearing, and the claimant conducted himself properly. Moreover, the ALJ finds the vocational expert's testimony credible and based thereon, there are a significant number of jobs in the national economy which the claimant could reasonably be expected to perform. Therefore, the claimant must be here found "not disabled" for purposes of entitlement to Social Security benefits. *Id.* at 25.

III. Legal Analysis

The issue on appeal is whether substantial evidence supports the ALJ's decision that Church is not disabled. Intertwined in such an issue is whether the ALJ properly evaluated Church's alcohol impairment.

The mere presence of alcoholism is not necessarily disabling, but alcoholism -- alone or in combination with other impairments -- can be a disabling condition. *Metcalf v. Heckler*, 800 F.2d 793, 796 (8th Cir. 1986). To establish a disability predicated on

¹² *It is an interesting aside to realize that the implications of the ALJ's comments are that treating physicians should somehow not either listen to or even ask their patients about their physical condition as part of the course of treatment and diagnosis -- a clearly absurd conclusion. Medical doctors are trained to evaluate a patient's complaints in relation to objective medical data.*

alcoholism, however, a claimant must show: (1) that he has lost control to the point of being "impotent to seek and use means of rehabilitation" and (2) that his disability is encompassed" by the Social Security Act. *Id.*, citing *Adams v. Weinberger*, 548 F.2d 239, 245 (8th Cir. 1977).

In this case, the medical evidence shows that Church suffered from "severe alcohol abuse". *Record at 27*. What is unclear is whether substantial evidence supports the ALJ's decision that Church meets listing 12.06 and/or 12.09. If that decision is supported, the question shifts to step 4 of the sequential evaluations: whether substantial evidence supports the ALJ's decision that Church can return to his past relevant work as a claims adjuster.¹³

The ALJ relied on the testimony of Dr. Goodman and of the Vocational Expert. Dr. Goodman said that Church, if sober, could work. Hunter, in response to the ALJ's hypothetical question, testified that Church could work as a record and mail clerk. The ALJ also considered evidence submitted by Dr. Reid, but discounted it because it was "almost exclusively based" on Church's subjective complaints.¹⁴ The ALJ further found Church's subjective complaints to not be credible, although he appeared to place significant weight on Church's statement that "I don't think...my problems are particularly related to alcohol." It is unclear as to what weight, if any, the ALJ gave the medical evidence submitted by Dr. Cobb.

¹³ *In reviewing the decision, the Court recognizes the ALJ must make determinations of credibility. Teitel v. Heckler, 775 F.2d 1104 (10th Cir. 1985).*

¹⁴ See, Footnote 12.

Three problems exist in the ALJ's decision. First, the Secretary must give substantial weight to the claimant's treating physician unless good cause dictates otherwise. If the treating physician's opinion is disregarded, specific and legitimate reasons must be set forth by the Secretary. *Byron v. Heckler*, 742 F.2d 1232, 1235 (10th Cir. 1984).

In the case at bar, the ALJ disregarded Dr. Reid's findings because they were based on Church's subjective complaints. Such a reason is not legitimate. Dr. Reid, the director of a local alcohol treatment program, testified that he personally observed Church "40 or 50 times", including every day during a 30-day alcoholism treatment program. The ALJ's logic appears to be that Dr. Reid did not personally observe Church while he was drinking, and, consequently, could not render an objective medical decision as to whether Church could work. That logic is suspect. Dr. Reid was certainly in a position to medically judge Church's impairment, especially given the number of times he has seen him. The ALJ does not have to accept Dr. Reid's findings *in toto*, but his findings are entitled to greater weight unless the ALJ had other "specific and legitimate" reasons to discount Dr. Reid's evidence. Such reasons were not forthcoming.

A second issue is the ALJ's hypothetical question. Testimony elicited by hypothetical questions **that do not relate with precision all of a claimant's impairments** cannot constitute substantial evidence to support the Secretary's decision. *Hargis v. Sullivan*, 945 F.2d 1482, 1492 (10th Cir. 1991).

In this case, the ALJ's hypothetical question omitted an important factor: Church's excessive drinking of alcohol. Church had a "severe alcohol" problem, which began at age 14. That problem was further illustrated by Church's participation in three alcohol

treatment programs. He also testified that he drank "anywhere from a half to a pint of...whiskey" four to five nights a week. Drs. Reid and Goodman also testified that Church abuses alcohol, although Dr. Goodman said he believed Church could work if sober. On the other hand, the record indicates little evidence that Church can either control his drinking (i.e. be sober when he desires) or that the problem has dissipated. As a result, the hypothetical question did not "relate with precision" Church's impairments.¹⁵ Therefore, the testimony of the vocational expert does not constitute substantial evidence.

A third part of evidence -- one which the ALJ appeared to heavily rely on -- also casts shadows over his final decision. Dr. Goodman, the Secretary's medical advisor, did not personally examine Church. In light of his critical comments concerning Church's motivation, Dr. Reid's findings and questions about past medical records, such a fact decreases the value of his expert opinion. Another problem with Dr. Goodman's testimony is his statement that Church, if sober, could work. Exactly what weight such a statement should carry is unclear. The pertinent question is whether Church has the ability to control himself to be sober. His history clearly shows he cannot. Another puzzling aspect of Dr. Goodman's testimony, although virtually irrelevant in light of existent case law and regulations regarding "alcoholism", are his comments concerning whether alcoholism is an illness.

IV. Conclusion

To establish a disability predicated on alcoholism, Church must show: (1) that he

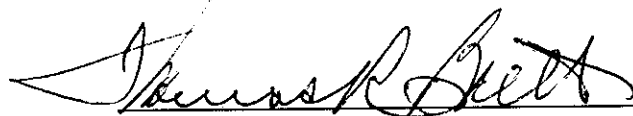
¹⁵ The ALJ places a great deal of emphasis on Church's statement that he did not think his drinking was a problem. However, a claimant's denial of a drinking problem does not preclude a finding of disability because "such denials are typical of the disease and are inherently unreliable." See Gross v. Heckler, 785 F.2d 1163, 1171 (4th Cir. 1986).

has lost control to the point of being "impotent to seek and use means of rehabilitation," and (2) that his disability is encompassed" by the Social Security Act. In addition, alcoholism, in combination with other impairments (such as Church's Post Traumatic Stress), can be a disabling condition.

A review of the record reveals the following. The ALJ relied on two significant areas of testimony and evidence. The first was the testimony of the Vocational Expert. As discussed above, this Court finds the hypothetical question to be improper, and, as a result, the Vocational Expert's testimony cannot constitute substantial evidence. The testimony of Dr. Goodman is also not persuasive, and thus does not constitute "substantial evidence". Finally, Dr. Reid's testimony, as the treating physician, should have been accorded greater weight unless the ALJ can cite a specific and legitimate reason for not doing so. In this case the ALJ cited no such reasons.

Accordingly, the case is **REMANDED**, and the Secretary is directed to determine if the petitioner meets the test set out herein.

SO ORDERED THIS 21st day of Sept., 1993.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET
DATE SEP 23 1993

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff(s),

v.

LMS HOLDING COMPANY,

Defendant(s).

FILED

SEP 21 1993

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

92-C-1198-B ✓

ORDER

Now before the Court is the United States of America's appeal of a decision by the United States Bankruptcy Court for the Northern District of Oklahoma. The Bankruptcy Court found that Appellees could avoid a lien by the Internal Revenue Service ("IRS") pursuant to 11 U.S.C. § 544(a)(1). The result of that decision left the IRS with an unsecured claim against Debtors.

I. The Facts

On January 25, 1988, the IRS filed a perfected Notice of Tax Lien against property held by MAKO, Inc.¹ MAKO filed bankruptcy and filed a plan that listed the IRS claim as a "Disputed Secured Claim". Subsequently, Retail Marketing Corporation ("RMC") acquired the property that was subject to the tax lien. The IRS had notice of the MAKO bankruptcy and was aware of the formulation and confirmation of the plan, which included the terms of the sale of the MAKO property to RMC.² The MAKO plan was confirmed in August of

¹ The IRS claimed that MAKO owed it some \$350,000 in delinquent taxes and interest. Complaint to Avoid Liens, July 29, 1992.

² The Bankruptcy Court found that the IRS participated in the MAKO bankruptcy and was aware of the "formulation and confirmation" of the MAKO Plan, including the terms of the sale of the Subject Property to RMC. Order Granting Plaintiffs' Motion, December 29, 1992.

1989.

The IRS did not file a Notice of Tax Lien against RMC or any other type of filing in the name of RMC or the other debtors, alerting others of its tax lien on the property. RMC later filed for bankruptcy, and the Bankruptcy Court filed an Order, setting November 20, 1991 as the last day to file proofs of claim against the debtor. The IRS failed to file its claim by that date, and instead waited until November 19, 1992 to do so.

As a result, RMC and other debtors filed a Complaint To Avoid Liens on July 29, 1992 in the Bankruptcy Court. After examining the complaint, the Bankruptcy Court held that the IRS, pursuant to 26 U.S.C. §6323, was required to file a new notice of tax lien against RMC. Since it failed to do so, the Bankruptcy Court found that the RMC was entitled to avoid the lien pursuant to 11 U.S.C. §544(a)(1). That decision left the IRS with an unsecured claim against RMC.

II. Legal Analysis

The issue is whether the Bankruptcy Court erred as a matter of law in finding that the IRS was required to file a second Notice of Tax Lien under 26 U.S.C. §6323 against RMC to retain their status as a judgment lien creditor. Section 6321 states that the IRS can file a lien against delinquent taxpayers. But §6323(a) states:

The lien imposed by section 6321 shall not be valid as against any purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor until notice thereof which meets the requirements of subsection (f) has been filed by the Secretary.³

³ Subsection (f) requires the IRS to file notice of the lien according to state law.

No mandatory precedent on this specific issue was found, but a close analogy exists between the facts here and cases involving a taxpayer's name change. For example, in *Davis v. United States*, 705 F.Supp. 446 (C.D. Ill. 1989), the IRS filed a notice of tax lien against the property of "Gillian Renslow" for delinquent taxes. Gillian Renslow, however, was divorced in 1981 and changed her name to "Gillian Rongey" in 1982 when she remarried. The IRS did not file a second tax lien against Gillian Rongey. Rongey then sold the property in 1986. The IRS started foreclosure proceedings, asserting that it did not have to refile notice of a tax lien when a taxpayer has changed her name. The court rejected that argument:

The entire statutory scheme under which the IRS is granted the duty and authority to file notices of tax liens compels a finding of a duty to refile under such circumstances. The sine qua non of Section 6323 is notice to subsequent takers of the existence of the IRS lien.*Id. at 453.*

The court held that "where the IRS has notice that a delinquent taxpayer has changed his or her name, and where the notice of tax lien was filed under the taxpayer's original name, the IRS is under an affirmative duty to refile the notice of tax lien to show the taxpayer's new name." *Id.* Another court, facing a similar issue, concluded:

The remarriage of Carolyn Clark (of which the Internal Revenue Service received notice) resulted in a situation where there was no reasonable opportunity for a prudent person dealing with the delinquent taxpayer to ascertain the existence of a federal tax lien. A "reasonable inspection" would not reveal the lien. *United States v. Clark*, 81-1 U.S.T.C. ¶9406 (S.D. Fla. 1981).


While the facts in the *Davis* and *Clark* cases differ from the instant case, the issues are similar. Here, the IRS filed a tax lien against property belonging to MAKO. The property changes hands, and the IRS -- which knew about the RMC acquisition -- failed to file a new lien in the name of RMC.

The IRS attempts to distinguish the instant case from *Davis* and *Clark* because no "name change" took place (i.e. MAKO did not become RMC). Yet, as the Bankruptcy Court pointed out, RMC's acquiring of MAKO property through bankruptcy is much more complex than a simple name change. If the IRS must file a new notice of a tax lien against taxpayers who merely change their name, the same result should ensue when an entirely new entity is involved. Otherwise, how would a reasonable inspection reveal that property owned by RMC is the subject of a federal tax lien that was filed originally against MAKO? In addition, the problem could have been eliminated had IRS simply followed the statute.

In essence, the IRS -- which fails to provide persuasive or mandatory legal authority on point -- asks the Court to ignore the requirements of §6323. That should not be done.⁴ A valid lien under §6321 against judgment lien creditors must follow the requirements set forth in §6323(f). By not filing a new notice in the name of RMC, despite having knowledge of the RMC's acquisition of the MAKO property, the IRS erred. As a result of that error, the Bankruptcy Court found that the IRS now has an unsecured claim. That decision was not an error as a matter of law. As a result, the decision is **AFFIRMED**.

⁴ Part of the IRS' argument appears to be that, once the IRS files a federal tax lien, it must do no more. See *United States v. Cache Valley Bank*, 866 F.2d 1242, 1244 (10th Cir. 1989) ("The federal tax lien arises when unpaid taxes are assessed and continues until the resulting liability is either satisfied or becomes unenforceable through lapse of time.") It is true that once a lien has attached in property, the lien cannot be extinguished (if it has been properly filed) by a transfer or conveyance of the interest. See, generally, *United States v. Rodgers*, 103 S.Ct. 2132, 2141, fn.16. But, if no proper filing has taken place, the priority of the lien can be affected. See *Title Guaranty Company v. Internal Revenue Service*, 667 F.Supp. 767, 769 (D. Wyo. 1987) ("Failure to refile the lien does not necessarily affect the validity of the lien, but affects...the priority of the lien.") In the instant case, the Bankruptcy Court did not extinguish the lien. It merely concluded that, due to the IRS' failure to follow §6323, the IRS had only an unsecured claim.

SO ORDERED THIS 20th day of Sept., 1993.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

SEP 23 1993
ENTERED
SECRET

DATE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

CAROL SUE BOYD,
Plaintiff,
vs.
KENNETH FOSTER and
FLORENCE COOK,
Defendants,
and
KENNETH FOSTER,
Third Party Plaintiff,
vs.
FORD MOTOR CREDIT CORPORATION,
Third Party Defendant.

Case No. 92-C-883 B

FILED
SEP 22 1993
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

JOURNAL ENTRY OF JUDGMENT

NOW on this 22nd day of Sept., 1993, comes on before me the undersigned Judge of the above entitled Court the above captioned matter. The Plaintiff Carol Sue Boyd appears in person and by and through her attorney Richard D. White, Jr.; the Defendant Kenneth Foster appears in person and by through his attorney David Dick; the Court having heard the stipulations of the parties, and reviewed the pleadings and being fully advised in the premises finds as follows:

I

The Plaintiff Carol Sue Boyd shall be granted judgment against the Defendant Kenneth Foster in the sum of \$36,300.00.

II

The factual basis supporting this judgment is such that this judgment shall be non-dischargeable in bankruptcy pursuant to 11 U.S.C. §727.

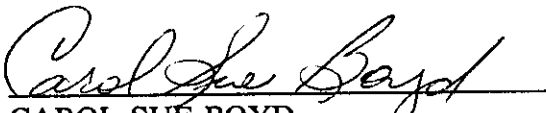
III

The parties agree that the terms and conditions of this settlement shall be kept confidential.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THE COURT, that all matters set forth above be hereby ordered, adjudged and decreed as if fully set out herein.


S/ THOMAS R. BRETT

JUDGE OF THE DISTRICT COURT


CAROL SUE BOYD
Plaintiff


RICHARD D. WHITE, JR.
Attorney for Plaintiff


KENNETH FOSTER
Defendant


DAVID DICK
Attorney for Defendant

ENTERED ON DOCKET
DATE **SEP 23 1993**

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

FEDERAL DEPOSIT INSURANCE
CORPORATION, in its corporate
capacity, as successor-in-interest
to certain assets of the failed
NORTH SIDE STATE BANK; and UNITED
STATES OF AMERICA ex rel. ADMINI-
STRATOR OF VETERANS' AFFAIRS, now
known as SECRETARY OF VETERANS AFFAIRS,

Plaintiffs,

vs.

Case No. 92-C-896-C

S. RAY LOHMAN and RUTHIE HUDDLE-
STON LOHMAN, a/k/a RUTHIE LOHMAN,
a/k/a RUTHIE LOU LOHMAN, a/k/a
RUTHIE L. LOHMAN, a/k/a RUTHIE
HUDDLESTON, a/k/a RUTHIE LOU JONES,
a/k/a RUTH L. JONES, a/k/a RUTHIE L.
JONES, husband and wife; PATSY J.
POWELL, a single person; RESCO
PROPERTIES, INC., an Oklahoma corpora-
tion; RESCO R.V. SUPPLY, INC., an
Oklahoma corporation; COOPER
COMMUNITIES, INC., an Arkansas corpora-
tion; FORD MOTOR CREDIT COMPANY, a
Delaware corporation; LILLIAN LOHMAN,
a single person; JAMES WILLIAM O'NEAL
and ANNIE MARIE O'NEAL, husband and
wife; TULSA DEVELOPMENT AUTHORITY;
THE AREA COUNSELS FOR COMMUNITY ACTION
OF TULSA; BOARD OF COUNTY COMMISSION-
ERS OF TULSA COUNTY, OKLAHOMA;
JOHN F. CANTRELL, COUNTY TREASURER OF
TULSA COUNTY, OKLAHOMA; and JOHN JONES,
a single person,

Defendants.

FILED
SEP 22 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

**AGREED JOURNAL ENTRY OF JUDGMENT
AND DECREE OF FORECLOSURE**

Now on this 18 day of September, 1993,
comes on before me the above-entitled cause before the undersigned
Judge of the United States District Court for the Northern District

**NOTE: THIS ORDER IS TO BE MAILED
BY MOVANT TO ALL COUNSEL AND
PRO SE LITIGANTS IMMEDIATELY
UPON RECEIPT.**

of Oklahoma. Plaintiff, Federal Deposit Insurance Corporation, in its corporate capacity ("FDIC"), as successor-in-interest to certain assets of the failed North Side State Bank, appears by and through its attorneys of record Bradley K. Beasley and Sheila M. Powers of Boesche, McDermott & Eskridge, Co-Plaintiff, United States of America ex rel. Administrator of Veterans' Affairs, now known as Secretary of Veterans Affairs ("Veterans Affairs"), appears by its attorney of record Wyn Dee Baker, Assistant United States Attorney. Defendants, S. Ray Lohman and Ruthie Huddleston Lohman, a/k/a Ruthie Lohman, a/k/a Ruthie Lou Lohman, a/k/a Ruthie L. Lohman, a/k/a Ruthie Huddleston, a/k/a Ruthie Lou Jones, a/k/a Ruth L. Jones, a/k/a Ruthie L. Jones, husband and wife, Resco Properties, Inc., Resco R.V. Supply, Inc., Tulsa Development Authority, Board of County Commissioners of Tulsa County, Oklahoma and John F. Cantrell, County Treasurer of Tulsa County, Oklahoma, appear through their respective attorneys of record and approve this Journal Entry of Judgment and Decree of Foreclosure. The Defendants, Patsy J. Powell, Cooper Communities, Inc., Ford Motor Credit Company, The Area Counsels for Community Action of Tulsa, Lillian Lohman (Dickey), James William O'Neal, Annie Marie O'Neal and John Jones, do not appear.

The Court being fully advised in the premises, after reviewing all of the evidence and having heard statements by counsel, finds as follows:

1. This Court finds that it has jurisdiction over the subject matter and all parties to this action.

2. The Court further finds that all the parties, with the exception of James William O'Neal and Annie Marie O'Neal, husband and wife, and John Jones, were personally served with a summons and copy of the Complaint and First Amended Complaint, as evidenced by the verified returns of service and certificates of service filed in this action.

3. The Court further finds that the Defendants, William O'Neal and Annie Marie O'Neal, husband and wife and John Jones, a single person, were properly served by publication. The Court conducted a judicial inquiry into the sufficiency of the Plaintiffs' search to determine the names and whereabouts of the Defendants who were served herein by publication, and based on the evidence adduced, the Court finds that Plaintiffs have exercised due diligence and have conducted a meaningful search of all reasonably available sources at hand. The Court approves the publication of service given herein as meeting both statutory requirements and the minimum standards of state and federal due process.

4. The Court further finds that Defendants, Cooper Communities, Inc., Ford Motor Credit Company, James William O'Neal, Annie Marie O'Neal, The Area Counsels for Community Action of Tulsa and John Jones, have not filed any responsive pleadings or made any response to the Complaint or First Amended Complaint and that they are in default, after being properly served with Summons and Complaint in the manner required by law.

5. The Court further finds that Defendant, Patsy J. Powell,

after being properly served, has not filed an answer or any other responsive pleading to the cross-claim of Tulsa Development Authority and is in default.

6. The Court further finds that Defendants, S. Ray Lohman and Ruthie Huddleston Lohman, husband and wife, Resco Properties, Inc., an Oklahoma corporation, and Resco R.V. Supply, Inc., an Oklahoma corporation, filed their Answer on October 22, 1982 and their First Amended Answer on February 9, 1993, requesting marshalling of assets and release of FDIC liens on certain personal property.

7. The Court further finds that Defendants, Board of County Commissioners of Tulsa County, Oklahoma, filed its Answer on October 27, 1992, and Answer to First Amended Complaint on January 28, 1993, disclaiming any right, title or in interest in the subject properties.

8. The Court further finds that Defendant, John F. Cantrell, County Treasurer of Tulsa County, Oklahoma, filed its Answer on October 27, 1992, and Answer to First Amended Complaint on January 28, 1993, asserting delinquent personal property taxes for 1991 and 1992, plus accruing costs and interest.

9. The Court further finds that Defendant Tulsa Development Authority filed its Answer to the First Amended Complaint and Cross-Claim on January 27, 1993, asserting its right to an in personam judgment against Patsy J. Powell and foreclosure of its mortgages lien interest.

10. The Court further finds that Defendant Patsy J. Powell

filed a Disclaimer on October 23, 1992, disclaiming all right, title and interest in the subject properties.

11. The Court further finds that on December 14, 1989, the Office of the Oklahoma State Banking Commissioner issued Order No. 89-R-23 and closed North Side State Bank, Tulsa, Oklahoma (the "Bank") and assumed exclusive custody and control of the property and affairs of the Bank, pursuant to OKLA. STAT. tit. 6, § 1202(B). The Oklahoma State Banking Commissioner then tendered to FDIC appointment as the Liquidating Agent of the Bank, pursuant to OKLA. STAT. tit. 6, 1205(B). FDIC accepted the appointment as Liquidating Agent for the Bank and became possessed of all assets, business and property of the Bank pursuant to OKLA. STAT. tit. 6, § 1205(C) and Sec. 212, paragraph 2212(12) of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C. § 1821(e)).

12. Subsequently, certain assets of the Bank were sold and transferred from FDIC, as Liquidating Agent, to FDIC, in its corporate capacity, the Plaintiff herein, pursuant to OKLA. STAT. tit. 6, § 1204(A).

13. FDIC, in its corporate capacity, pursuant to 12 U.S.C. § 1823(c)(2)(A), purchased all right, title, and interest in and to certain assets of the Bank, including, but not limited to, its promissory notes, mortgages, and security agreements, referred to herein and is the holder and owner of same.

14. The Court further finds that all the allegations contained in FDIC's First Amended Complaint are true and that FDIC

is entitled to an in personam judgment against Defendants, S. Ray Lohman and Ruthie Huddleston Lohman, a/k/a/ Ruthie Lohman, a/k/a Ruthie Lou Lohman, a/k/a Ruthie L. Lohman, a/k/a Ruthie Huddleston, a/k/a Ruthie Lou Jones, a/k/a Ruth L. Jones, a/k/a Ruthie L. Jones, husband and wife, and each of them, jointly and severally, for the principal sum of \$52,771.96, plus interest accrued through June 1, 1993, in the sum of \$21,582.78, with interest accruing thereafter at the per diem rate of \$18.00 until paid, plus all costs and expenses, including abstracting costs of \$400.00, any amounts advanced for taxes, and a reasonable attorney fee of \$5,500.00, all to bear interest at the rate of 3.40 per annum until paid.

15. The Court further finds that FDIC is entitled is judgment in rem against all named Defendants herein as FDIC's mortgage interest in and to the real property at issue is a first, prior, valid and enforceable lien upon that property securing FDIC's lien and judgment, except as to any unpaid real estate and ad valorem taxes and the first mortgage interest of the Veterans Affairs in and to the Lake-View Property. The real estate securing FDIC's lien and judgment is described as follows:

Tract 1:

The North Fifty-three (53) feet of Lot Seven (7), Block Ten (10), GOLDEN HILL ADDITION to the City of Tulsa, Tulsa County, Oklahoma and The South Twenty-seven (27) feet of the North Eighty (80) feet of Lot Seven (7), Block Ten (10), in GOLDEN HILL ADDITION to the City of Tulsa, Tulsa County, Oklahoma and The North One Hundred Twenty (120) feet of the South Two Hundred Twenty (220) feet of Lot Seven (7), Block Ten (10), GOLDEN HILL ADDITION to the

City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof;

Tract 2:

Lot Eighteen (18), Block Six (6), in NORTHRIDGE, an Addition in Tulsa County, State of Oklahoma, according to the recorded plat thereof; and

Tract 3:

Lot Eighteen (18), Block Four (4), LAKE-VIEW HEIGHTS AMENDED ADDITION, to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

16. The Court further finds that all the allegations in the Veterans Affairs First Amended Complaint are true and that the Veterans Affairs is entitled to an in personam judgment against Defendant, Ruthie Huddleston Lohman, a/k/a/ Ruthie Lohman, a/k/a Ruthie Lou Lohman, a/k/a Ruthie L. Lohman, a/k/a Ruthie Huddleston, a/k/a Ruthie Lou Jones, a/k/a Ruth L. Jones, a/k/a Ruthie L. Jones, for the principal sum of \$4,804.77, plus interest accrued and accruing at the annual rate of 4.50% from January 1, 1992, until paid, plus judgment for all costs and expenses, any amounts advanced for taxes, abstracting and for preservation of the subject property and a reasonable attorney fee of \$480.00 with interest on the above sums at the rate of 3.40 per annum until paid.

17. The Court further finds that Veterans Affairs is entitled to judgment in rem against all named Defendants herein as the Veterans Affairs' mortgage interest in and to the subject real property is a first, prior, valid and enforceable lien upon the property securing the Veterans Affairs' lien and judgment, except

as to any unpaid real estate ad valorem taxes. The real estate securing the Veterans Affairs' lien and judgment is described as follows:

Lot Eighteen (18), Block Four (4), LAKE-VIEW HEIGHTS AMENDED ADDITION to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof (the "Lake-View Property").

18. The Court further finds that all the allegations contained in the Tulsa Development Authority's Cross-Claim are true and that the Tulsa Development Authority is entitled to an in personam judgment against Defendant Patsy J. Powell, a single woman, for the principal sum of \$3,000.00, with interest accruing at the annual judgment rate from and after September 8, 1992, until paid in full, plus all costs and expenses, including a reasonable attorney fee of \$450.00.

19. The Court further finds that the Tulsa Development Authority is entitled to judgment in rem against all Defendants herein as the Tulsa Development Authority's mortgage interest in and to the Lake-View Property is a valid and enforceable lien upon the Lake-View Property securing the Tulsa Development Authority's lien and judgment, subject only to the liens of the Veterans Affairs, FDIC and any unpaid real estate ad valorem taxes.

20. The Court further finds that FDIC, the Veterans Affairs and Tulsa Development Authority elect to have the subject properties sold with appraisement and such election is approved, and the sale shall be with appraisement.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by this Court as

follows:

A. That Plaintiff FDIC shall have and recover judgment in rem against all Defendants and in personam against Defendants, S. Ray Lohman and Ruthie Huddleston Lohman, a/k/a/ Ruthie Lohman, a/k/a Ruthie Lou Lohman, a/k/a Ruthie L. Lohman, a/k/a Ruthie Huddleston, a/k/a Ruthie Lou Jones, a/k/a Ruth L. Jones, a/k/a Ruthie L. Jones, husband and wife, and each of them jointly and severally, for the principal sum of \$52,771.96, with interest accrued through June 1, 1993, in the amount of \$21,582.78 and interest accruing thereafter at the per diem rate of \$18.80 until paid, plus abstracting expenses of \$400.00, plus any amounts advanced for taxes, plus all costs and expenses, accrued and accruing, including a reasonable attorney fee of \$5,550.00, all to bear interest at the rate of 3.40 per annum until paid.

B. That FDIC has first and prior mortgages on the real estate and improvements on Tracts 1 and 2 and a second mortgage on Tract 3 (the Lake-View Property), that the liens of FDIC are adjudged to be good and valid liens upon the properties and that FDIC's judgment indebtedness is secured by the liens. Any and all right, title and interest which the Defendants have claim in and to Tracts 1, 2, and 3 is hereby foreclosed as junior, inferior and subordinate to the mortgage liens of FDIC, except as to any real estate ad valorem taxes.

C. That Co-Plaintiff Veterans Affairs shall have and recover judgment in rem against all Defendants and judgment in personam against Defendant, Ruthie Huddleston Lohman, a/k/a/ Ruthie Lohman,

a/k/a Ruthie Lou Lohman, a/k/a Ruthie L. Lohman, a/k/a Ruthie Huddleston, a/k/a Ruthie Lou Jones, a/k/a Ruth L. Jones, a/k/a Ruthie L. Jones, for the principal sum of \$4,804.77, with interest accrued and accruing at the annual rate of 4.50% from January 1, 1992, until paid, plus all costs and expenses, plus any amounts advanced for taxes, insurance, abstracting for preservation of the Lake-View Property and a reasonable attorney fee of \$480.00, all to bear interest at the rate of 3.40 per annum until paid.

D. That the Veterans Affairs has a first and prior mortgage on the real estate and improvements on the Lake-View Property, that the mortgage lien of the Veterans Affairs is adjudged to be a good and valid lien upon the Lake-View Property and that the Veterans Affairs' judgment indebtedness is secured by the lien. Any and all right, title and interest which the Defendants and FDIC have or claim in and to the Lake-View Property is hereby foreclosed as junior, inferior and subordinate to the mortgage lien of the Veterans Affairs, except as to any real estate ad valorem taxes.

E. That Defendant and Cross-Claimant, Tulsa Development Authority, has a third mortgage lien upon the Lake-View Property and shall have and recover of and from the Defendant, Patsy J. Powell, a single person, an in personam judgment in the principal amount of \$3,000.00, with interest accruing at the judgment rate of 3.40 per annum from and after September 8, 1992, until paid, plus costs and expenses, including a reasonable attorney fee of \$450.00.

F. That the mortgage lien of Defendant and Cross-Claimant, Tulsa Development Authority, in the amounts set forth above, is

hereby foreclosed and is established to be a valid and third mortgage lien on the Lake-View Property, junior and inferior only to the mortgage liens of the Veterans Affairs and FDIC.

G. That upon the failure of the Defendants, S. Ray Lohman, Ruthie Huddleston Lohman, a/k/a/ Ruthie Lohman, a/k/a Ruthie Lou Lohman, a/k/a Ruthie L. Lohman, a/k/a Ruthie Huddleston, a/k/a Ruthie Lou Jones, a/k/a Ruth L. Jones, a/k/a Ruthie L. Jones, and Patsy J. Powell, to satisfy the judgment indebtedness of FDIC, the Veterans Affairs and Tulsa Development Authority, a Special Execution and Order of Sale shall issue from the Clerk of this Court directed to the Sheriff of Tulsa County, Oklahoma, to advertise and sell with appraisement Tracts 1, 2 and 3 and to apply the proceeds of said sale as follows:

Tracts 1 and 2:

First, to the costs and expenses of this action and sale, including the attorney fee of FDIC;

Second, to the judgment indebtedness due and owing to FDIC as set forth herein; and

Third, the balance, if any remaining, to be paid into the Court subject to further order of the Court.

Tract 3 (Lake-View Property):

First, to the costs and expenses of this action and sale, including the attorney fee of the Veterans Affairs;

Second, to the judgment indebtedness due and owing the Veterans Affairs as set forth herein;

Third, to the reduction of the judgment indebtedness due and owing FDIC as set forth herein;

Fourth, to the judgment indebtedness due and owing Tulsa Development Authority as set forth herein;

Fifth, to the payment of personal property ad valorem taxes; and

Sixth, the balance, if any remaining, to be paid into the court subject to further orders of the Court.

H. That from and after the date of the sale of Tracts 1, 2 and 3 and the confirmation of said sale by the Court, that the parties and all persons claiming by, through or under them, be forever barred, foreclosed and enjoined from asserting or claiming any right, title, interest, estate and equity of redemption in Tracts 1, 2 and 3.

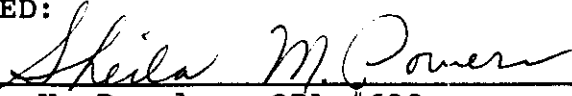
I. That upon confirmation of the sale ordered, the Sheriff of Tulsa County, Oklahoma, shall execute and deliver a good and sufficient deed to Tracts 1, 2 and 3 to the purchaser, which shall convey all the right, title and interest, estate and equity or redemption of all the parties and all the persons claiming under them and each of them since the filing of this action, and upon application of the purchaser, the Clerk of this Court shall issue a Writ of Assistance to the Sheriff of Tulsa County, Oklahoma, who shall place the purchase in full and complete possession and enjoyment of Tracts 1, 2 and 3.

So entered this 18 day of September, 1993.

(Signed) H. Dale Cook

JUDGE, UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

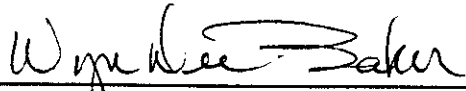
APPROVED:



Bradley K. Beasley, OBA #628
Sheila M. Powers, OBA #013757
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ATTORNEYS FOR FEDERAL DEPOSIT INSURANCE
CORPORATION, in its corporate capacity

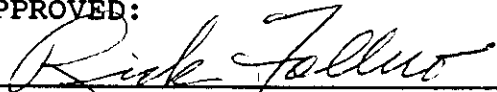
APPROVED:



Wyn Dee Baker, OBA #465
Assistant United States Attorney
3900 U.S. Courthouse
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ATTORNEYS FOR UNITED STATES OF AMERICA
ex rel. ADMINISTRATOR OF VETERANS'
AFFAIRS, now known as SECRETARY OF
VETERANS AFFAIRS

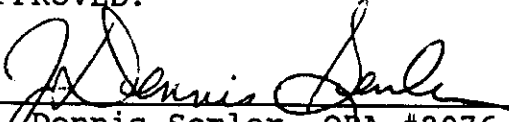
APPROVED:



Rick Folluo, OBA #3010
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ATTORNEYS FOR S. RAY LOHMAN, RUTHIE HUDDLESTON
LOHMAN, RESCO PROPERTIES, INC. AND RESCO R.V.
SUPPLY, INC.

APPROVED:

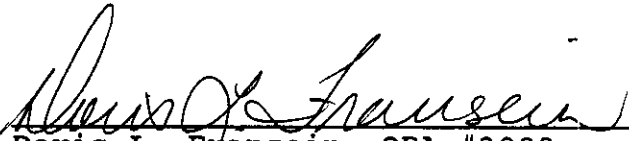
 92-C-896-C

J. Dennis Semler, OBA #8076
Assistant District Attorney
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(918) 596-4841

ATTORNEY FOR TULSA COUNTY TREASURER AND
BOARD OF COUNTY COMMISSIONERS

APPROVED:

BROWN & FRANSEIN

A handwritten signature in cursive script, appearing to read "Doris L. Fransein", is written over a horizontal line.

Doris L. Fransein, OBA #3000
5561 S. Lewis, Suite 100
Tulsa, OK 74105
(918) 742-6450

ATTORNEYS FOR TULSA DEVELOPMENT AUTHORITY

SMP/alt:#34/Lohman.JEJ

DATE SEP 23 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 22 1993

DONNA MC FADDEN,
Plaintiff,

vs.

EDGAR BURNS and WILLBROS
BUTLER ENGINEERS, INC.,
Defendants.

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Case No. 92-C-1098-B

O R D E R

Before the Court for consideration is Plaintiff's Motion for New Trial/Reconsideration, pursuant to Fed.R. Civ. P. 59(a)(2), or, in the alternative, to Amend the Court's Order to permit interlocutory appeal pursuant to 28 U.S.C. 1292(b). (Docket #10). The Court also has for consideration the Plaintiff's Motion to Amend her complaint pursuant to Fed. R. Civ. P. 15. (Docket #13).

Plaintiff's Motion for New Trial has no basis in law since there has not yet been a trial. Fed. R. Civ. P. 59(a)(2). Plaintiff's Motion to Reconsider is granted concerning the dismissal of Count IV for the alleged negligent infliction of emotional distress, and the Order issued by this Court on March 24, 1993 (Docket #9) is amended for reasons hereafter stated. Counts I and III were properly dismissed and Plaintiff's Motion to Reconsider those claims is denied.

The Court now reconsiders Plaintiff's claim in Count IV for alleged negligent infliction of emotional distress. In her complaint Plaintiff alleged discriminatory and harassing actions during her employment under the supervision of Defendant Burns,

from about February 1989 until her employment termination in October 1991. Plaintiff stated that she suffered physical harm as a result of Defendants' actions. (Compl. at 7; Docket # 1.)

Oklahoma law does not provide for a claim of negligent infliction of emotional distress in the absence of physical suffering or injury. However, Oklahoma law does recognize a cause of action for the negligent infliction of emotional distress, permitting recovery for physical injury caused by the mental anguish. *Obieli v. Campbell Soup Co.*, 623 F.2d 668 (10th Cir. 1980); *Richardson v. J.C. Penney, Inc.*, 649 P.2d 565, 567 (Okla. App. 1982). A plaintiff may recover for mental distress which is "produced by, connected with, or the result of, some physical suffering or injury...." *Thompson v. Minnis*, 202 P.2d 981, 985 (Okla. 1949).

In the case before this Court, Plaintiff McFadden stated that she was "harmed physically" (Compl. at 7; Docket # 1) in connection with the defendants' actions. Therefore, the Order filed by this Court sustaining Defendant's Motion to Dismiss that Count is hereby amended, and the case proceeds under Counts I, II, IV and V, pursuant to the scheduling order.

The claim for punitive damages and request for jury trial under Title VII were properly dismissed. In her Complaint (Docket #1) Plaintiff alleged actions which occurred prior to the effective date of the Civil Rights Act of 1991 (the Act). Although the Act is ambiguous on its face as to whether retroactive application was intended, the United States Supreme Court has stated that retroactivity is not favored when Congressional intent is unclear.

Bowen v. Georgetown University Hospital, 488 U.S. 204, 208 (1988).¹

In the Order sustaining Defendant's Motion to Dismiss Plaintiff's claim of punitive damages and request for a jury trial, this Court provided a litany of cases including Oklahoma federal district courts which have followed *Bowen*. Although the Tenth Circuit has not yet addressed the retroactive application of the 1991 Act, this Court "maintains its stance with the majority view". (Order granting Defs.' Mot. to Dismiss at 3) (Docket # 9). Therefore, Plaintiff failed to state a claim pursuant to Title VII and the claim has correctly been dismissed.²

Plaintiff states that the Court erred when it dismissed her claim for invasion of privacy in Count III. Plaintiff fails to

¹*Bowen* stated a presumption against retroactivity. An alternate view has been issued by the United States Supreme Court which addressed whether a change in the law occurring while a case was pending on appeal was to be given effect. *Bradley v. School Board of the City of Richmond*, 416 U.S. 696, 711, 715 (1974), stated a presumption in favor of retroactivity, ruling that "a court is to apply the law in effect at the time it renders its decision, unless doing so would result in manifest injustice or there is statutory direction or legislative history to the contrary." *Id.* at 711.

Assuming the two views to be in direct conflict with each other, the Tenth Circuit has adopted the *Bowen* presumption for cases pending at the time of enactment, but did not address cases filed after enactment. *Bland v. Burlington Northern R. Co.*, 811 F.Supp. 571, 574 (D. Colo. 1992).

See also *Vogel v. City of Cincinnati*, 959 F. 2d 594 (6th Cir. 1992), cert. denied 113 S.Ct. 86 (1992) (following *Bowen's* general rule against retroactivity); *DeVargas v. Mason & Hanger-Silas Mason Co.*, 911 F.2d 1377 (10th Cir. 1990), cert. denied ___ U.S. ___, 111 S.Ct. 799, 112 L. Ed. 2d 860 (1991).

²However, Plaintiff is entitled to a jury trial and to pursue punitive damages for the claim of wrongful termination. See *Burk v. K-Mart Corp.*, 770 P.2d 24 (Okla. 1989).

allege sufficient facts to support such a claim under Oklahoma law. The tort of invasion of privacy entails interference with one's interest in leading a secluded and private life, "free from the prying eyes, ears, and publications of others." Rest. 2d Torts §652A, cmt. b (19).³ The factual allegations in the complaint do not give rise to invasion of privacy. See *Eddy v. Brown*, 715 P.2d 74, 77 (Okla. 1986). Defendants' alleged knowledge that Plaintiff's husband was unemployed, coupled with Defendants' alleged discriminatory and harassing treatment of Plaintiff, does not constitute prying or intrusion upon Plaintiff's solitude or seclusion on which to base a claim for invasion of privacy.⁴

Plaintiff's Motion to Amend the Court's Order to permit interlocutory appeal on the retroactivity of Title VII and on the claim for invasion of privacy is denied. (Docket #10). This Court is of the opinion that the issues dismissed do *not* involve controlling questions of law as to which there is substantial ground for difference of opinion. Nor would an immediate appeal

³The Restatement (Second) of Torts recognizes four types of invasion of privacy: (a)unreasonable intrusion upon the seclusion of another, as stated in § 652B; or (b) appropriation of the other's name or likeness, as stated in 652C; or (c)unreasonable publicity given to the other's private life, as stated in 652D; or (d) publicity that unreasonably places the other in a false light before the public, as stated in 652E. Restatement (Second) of Torts S 652A (2). Of these, only the first is applicable. See *Robyn v. Phillips Petroleum Co.*, 744 F. Supp. 587, 592 (D. Colo. 1991)(a "substantial" unauthorized disclosure of financial information accompanied by repeated harassment regarding the wrongly publicized information). *Id.*

⁴However, the alleged offenses are covered in Plaintiff's remaining claims.

from the order materially advance the ultimate termination of the litigation. 28 U.S.C. § 1292(b). This case involves no exceptional circumstances to justify a departure from the general policy of postponing appellate review until after the entry of a final judgment. See *Fisons Limited v. United States*, 458 F.2d 1241, 1248 (1972) cert. denied, 405 U.S. 1041; See also *In re Uranium Antitrust Litigation*, 617 F.2d 1248, 1263 (1980) (stating that interlocutory review is for complex questions of law).

In the Motion to Reconsider, Plaintiff states that Defendants' Motion to Dismiss should have been treated as one for Summary Judgment. The supplemental material provided in Defendants' Motion to Dismiss (Docket #2) and in Plaintiff's Response to that Motion (Docket #4) were not considered by this Court. The facts alleged in the complaint⁵ are insufficient as a matter of law to state a claim for relief under a theory of tort liability for invasion of privacy. The Court affirms its Order sustaining Defendant's Motion to Dismiss Plaintiff's claim of Invasion of Privacy.

The Court now considers Plaintiff's Motion to Amend her complaint to add counts of assault and battery. (Docket #10). Plaintiff states that the statute of limitations was tolled while the EEOC was at work with its investigation of her Title VII claims. In support of this premise Plaintiff cites *Franks v. Bowman*

⁵On a motion to dismiss for failure to state a claim, the Court examines only the challenged pleading (i.e. the pleading attempting to set forth the claim). Fed R. Civ. P. 12(b)(6). If matters outside the pleading are not excluded by the court, the motion must be treated as a motion for summary judgment. *Id.*

Transportation Co., 495 F.2d 398, 405 (5th Cir. 1974), *cert. granted*, 420 U.S. 989 (1975), *rev'd on other grounds*, 424 U.S. 747 (1976).

In *Franks* the court held that the statute of limitation pertaining to the plaintiff's Civil Rights claims was tolled by the filing of a complaint with the EEOC and remained tolled until the plaintiff was in receipt of a right-to-sue letter. The *Franks* court first determined that a Georgia two-year statute of limitation was applicable. *Id.* at 405. The court then concluded that the limitations period was tolled for almost three years while the EEOC was at work until the plaintiff's receipt of a suit letter. *Id.*

Defendant on the other hand cites *Johnson v. Railway Express Agency, Inc.*, 421 U.S. 454 (1975), and contends that Plaintiff's supplemental state law claims are time barred. In *Johnson* the issue was whether the timely filing of a claim with the EEOC pursuant to Title VII tolled the statute of limitations for an action based on the same facts, brought three and one half years later under 42 U.S.C. § 1981. The *Johnson* court held that the plaintiff's claims under the two federal statutes were wholly separate from each other, there was no tolling, and the latter (§ 1981) remedy was time-barred.

In issue before this Court then, is whether Plaintiff McFadden's state law tort claims, based on the same factual basis

as her Title VII claim,⁶ should be treated in the same manner as the § 1981 claim in *Johnson*⁷ or in keeping with the *Franks* holding. The *Johnson* court carefully considered whether the effect of tolling would operate to nullify the purpose of the statute of limitations, *Id.* at 466-677 & fn. 13-14, and concluded that the plaintiff slept on her § 1981 rights. *Id.* In *Franks*, however the court upheld tolling so as not to deprive an aggrieved party of his rights based on a time lapse beyond his control. *Id.* at 404.

Plaintiff's McFadden's claims for assault and battery do not represent the difficulties presented in the *Johnson* case. In *Johnson*, the court analyzed whether two federal statutory remedies were mutually exclusive, so as to justify the plaintiff's protracted delay in filing her same claim under the second statute. In the case at bar the plaintiff seeks to add supplemental state claims within a comparatively short time of the original filing which contained both federal and state substantive claims.

⁶Plaintiff's Title VII claims have been dismissed. *See supra* pp. 2-3 & fn.1-2 and Order Sustaining Defendant's Motion to Dismiss.

⁷ The *Johnson* court considered several factors: (1) Whether § 1981 coverage was co-extensive with that of Title VII. *Id.* at 460; (2) Having resolved that the two federal remedies were wholly independent of each other, *Id.* at 461, the court then considered whether the state law limitation period is the only appropriate guide for implementing the federal cause of action *Id.* at 465; (3) Having stated that considerations of state law *may* be displaced if inconsistent with underlying federal policy, the court determined that such a displacement was not appropriate in the circumstances. *Id.* at 465-66; (4) the court then proceeded to the issue of whether tolling was appropriate.

The *Johnson* court discussed both state limitations law and federal statutory purpose as guides. (*Id.* at 465). In the case at bar, as in the *Franks* case, the state statute of limitations is our only guide, and the doctrine of relation back of amendments is applicable to render the state supplemental claims timely.

The propriety of tolling is revealed in additional cases including *EEOC v. National Cash Register Co.*, 405 F. Supp. 562, 574 (N.D. Ga. 1975); *Wilhite v. South Central Bell Tel. & Tel. Co.*, 426 F. Supp. 61, 66-67 (E.D. La. 1976); *Pittman v. Anaconda Wire & Cable Co.*, 408 F. Supp. 286, 294 (E.D. N.C. 1974). Defendant cites *Bennett v. Furr's Cafeterias Inc.*, 549 F. Supp. 887 (D.Colo. 1982) in which the court held there was no tolling while the EEOC was at work. The *Bennett* court applied Colorado law which provided an exhaustive list of circumstances in which the limitations period may be tolled. *Id.* at 892. Oklahoma has no such exclusive list and therefore the case at bar is distinguishable from *Bennett*.

In Oklahoma, an action for assault and battery must be brought within one year of the alleged offense. Okla. Stat. tit. 12. § 95 Fourth. Okla. tit. 12 § 95 Fourth one year statute of limitations applies equally to all of Plaintiff McFadden's potential tort claims. *See Franks*, 495 F.2d at 406. Plaintiff's employment ended on October 4, 1991, allowing one year from that date to file the claims Plaintiff now seeks to add. Filing charges with the EEOC served to toll the statute of limitations, and it remained tolled

until the right-to-sue letter was issued. *See Franks*, 495 F.2d at 405; *EEOC*, 405 F. Supp. at 574; *Pittman*, 408 F. Supp. at 293-94.

Plaintiff had one year from the date of her right-to-sue letter of September 8, 1992. Plaintiff filed her original complaint, on December 1, 1992, which was within three months of her right-to-sue letter. The amendment to add claims of assault and battery would withstand a motion to dismiss based on the statute of limitation, and therefore would not be futile.⁸ The claims relate back to the original complaint. Rule 15(c).

In *Johnson*, the court emphasized that the plaintiff could have filed his § 1981 claim at any time but failed to do so perhaps relying in the adequacy of his Title VII remedy. In the case at bar, Plaintiff McFadden timely filed various state law claims as well as a Title VII claim in her original pleading. Seeking to add supplemental state claims based on the exact same factual allegations is not the result of sleeping on her state claims rights. *See id.* at 466.

The case at bar entails a dismissal of the federal claim under

⁸Leave to amend is a matter committed to the court's sound discretion and is not to be denied without the court giving a reason or cause on the record. *Federal Ins. Co. v. Gates Learjet Corp.*, 823 F.2d 383, 387 (10th Cir. 1987). Leave may be denied when the amendment would be futile. *Foman v. Davis*, 371 U.S. 178, 182 (1962); *State Distributors, Inc. v. Glenmore Distilleries*, 738 F.2d 405, 416 (10th Cir. 1984).

For a discussion of when an amendment may be futile because it would not withstand a motion to dismiss, see Rule 15. See also *Schepp v. Fremont County*, 900 F.2d 1448, 1451 (10th Cir. 1990); *Moore v. Sneed*, 839 P.2d 682, 684 (Okla. App. 1992).

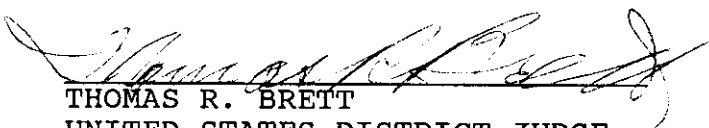
Title VII leaving only state law claims to be adjudicated. However, Plaintiff complied with the Title VII procedural requirements at the appropriate time. Allowing Plaintiff McFadden to amend presents no hardship to the defendants since the precise incidents giving rise to the supplemental claims were already set forth.

SUMMARY

Plaintiff's Motion for New Trial/Reconsideration (Docket #10) should be granted in part and denied in part as follows: this Court's Order filed March 26, 1993 is AMENDED to allow Plaintiff's claim for negligent infliction of emotional distress to proceed; Plaintiff's Motion to Reconsider is DENIED regarding Counts I and III; Plaintiff's Motion to Amend the Court's Order to permit interlocutory appeal is DENIED.

Plaintiff's Motion to Amend her complaint (Docket #13) is SUSTAINED, which Amended Complaint shall be filed on or before 15 days from the date hereof.

IT IS SO ORDERED this 22nd day of September, 1993.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET

DATE 9-23-93
IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 22 1993

UNITED STATES OF AMERICA,
Plaintiff,

**Richard M. Lawrence, Clerk
U.S. DISTRICT COURT**

-vs-

CIVIL NUMBER 93-C-673-B

PATRICIA M. JONES,
C-1838 52 64

Defendant,

NOTICE OF DISMISSAL

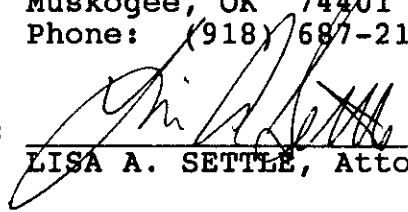
COMES NOW the Plaintiff, United States of America, by and through its attorney, Clifton R. Byrd, District Counsel, Department of Veterans Affairs, Muskogee, Oklahoma, and voluntarily dismisses said action without prejudice under the provisions of Rule 41(a)(1), Federal Rules of Civil Procedure.

Respectfully submitted,

UNITED STATES OF AMERICA

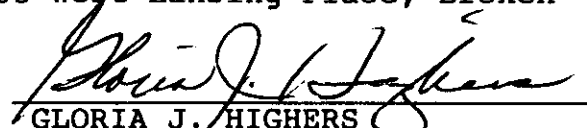
Clifton R. Byrd
District Counsel
Department of Veterans Affairs
125 South Main Street
Muskogee, OK 74401
Phone: (918) 687-2191

By:


LISA A. SETTLE, Attorney

CERTIFICATE OF MAILING

This is to certify that on the _____ day of _____, 1993, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to: PATRICIA M. JONES, at 4503 West Lansing Place, Broken Arrow, OK 74012.


GLORIA J. HIGHERS
Paralegal Specialist

DATE SEP 23 1993

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 22 1993

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

HOWARD EDWARD WEAVER,

Plaintiff,

vs.


UNITED STATES OF AMERICA,

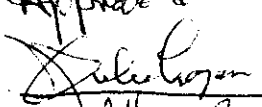
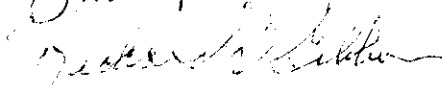
Defendant.

Case No. 92-C-740-B

ORDER

THIS matter comes on for hearing on the application of both Plaintiff and Defendant in the above-captioned matter. The Court, being fully advised in the premises, finds that the matter has been finally and completely resolved and therefore orders the above-cause of action dismissed with prejudice.


JUDGE OF THE UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT
OF OKLAHOMA

Approved -

Attorney for Plaintiff

Phil D. Smith
Asst. U.S. Attorney

RDG:dh
8/26/93
M264-0

ENTERED ON DOCKET

DATE 9-23-93

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

SEP 21 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ROBERT L. HOLLMAN,

Plaintiff,

-vs-

LOUIS W. SULLIVAN, M.D.,
SECRETARY OF HEALTH AND HUMAN
SERVICES,

Defendant.

Civil Action No. 91-C-723-B

ORDER

NOW ON this 20 day of Sept, 1993, there comes on for
hearing the motion of the plaintiff to dismiss his petition for attorney's fee.

And the Court, upon the statement of counsel and for good cause shown, finds that an attorney's fee has been awarded at the administrative level equal to 25% of the plaintiff's past due benefits. The petition for attorney's fee is therefore moot.

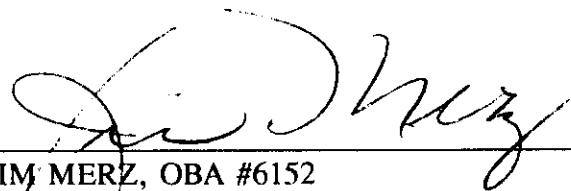
The Court further finds that this matter is concluded and should be dismissed.

IT IS SO ORDERED.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

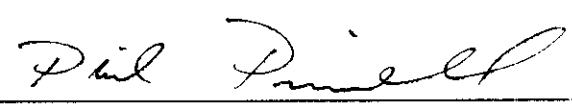
APPROVED:



JIM MERZ, OBA #6152
1330 N. Classen, Suite 301
Oklahoma City, Oklahoma 73106
(405) 235-2226

ATTORNEY FOR PLAINTIFF

STEPHEN C. LEWIS
United States Attorney



PHIL PINNELL, OBA #7169
Assistant United States Attorney
3900 United States Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

From my
Clerk's Office on
9/22/93. DA

FILED
DATE SEP 22 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ATLANTIC RICHFIELD COMPANY,

Plaintiff,

v.

AMERICAN AIRLINES, INC., Et.,
Al.,

Defendants.

Consolidated Cases Nos.

89-C-868-B

89-C-896-B

90-C-859-B

FILED

SEP 13 1993

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

MAGISTRATE'S REPORT AND RECOMMENDATION

On March 19, 1993,

~~Now on this~~ day of August, 1993, this matter ~~comes~~ ^{came} on

for consideration of the Plaintiff Atlantic Richfield Company's ("ARCO") NOTICE OF MOTION AND MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT (docket no. 656). The Plaintiff ARCO appears by its attorney, Larry Gutterridge, the Defendants appear by their respective lead counsel, and William Anderson appears as liaison counsel. The Magistrate having examined the files and records and proceedings herein, having reviewed and considered the terms and conditions of the settlements in question, and being fully advised and informed in the premises REPORTS and RECOMMENDS as follows:

1. The settlements in the above captioned action between the Plaintiff Atlantic Richfield Company (ARCO) and Defendants Cecil Lawson, Cecil Lawson Buick-Cadillac, Inc., Jim Norton Buick, Inc., Nassif Buick Co., Inc., A.J. Nassif, Northcutt Chevrolet Buick Co., Milo Gordon Chrysler Plymouth Inc., Oba Carner; Premier Pontiac, Inc., Roger Stich, Sober Brothers, Inc., Spraker Volkswagen, Inc., Don Thornton Ford, Inc., and Dean Bailey Olds, Inc., ("Settling Parties"), should be found to be in good faith, and a final judgment barring all claims against the Settling

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Parties for liabilities associated with the Sand Springs Site under state and federal law, except to the extent that such claims are preserved by the settlements, should be entered.

2. Each and every claim asserted by the Plaintiff against the Settling Parties should be dismissed in its entirety on the merits, with prejudice and without costs.

3. Each and every claim "deemed filed" by or against the Settling Parties pursuant to the terms of the First Amended Case Management Order, Section VII.B., filed March 6, 1992, should be dismissed in its entirety on the merits, with prejudice and without costs.

4. In accordance with the terms of the agreement with the Settling Parties, hereinafter referred to as the Agreement, a Judgment should be entered which includes the condition that the Agreement remains valid and in effect.

5. The terms "Site" and "volume" are as defined in the Agreement in ARCO's March 4, 1993, Motion for Determination of Good Faith Settlement.

6. Any breach, whether by omission or commission, whether intentional or non-intentional, of a Settling Party's representation and warranty that, it neither possesses, or has a right to possess, nor is aware of any information which indicates that it is responsible for additional or greater volume than is set forth in the Volume Report attached to the Agreement, which has not been included in the documentation provided to ARCO in support of its offer to enter the Agreement, should render the Agreement null and void.

7. In the event that the Agreement is or becomes null and void, ^{the} ~~this~~ Judgment along with all orders entered in conjunction with the Agreement should be vacated nunc pro tunc, the settlement reflected in the Agreement should be terminated pursuant to its terms, and the parties to the vacated Agreement should be deemed to have reverted to their respective status and position in the Action as of the date immediately prior to the execution of the Agreement.

8. Nothing contained in ^{the} ~~this~~ Judgment and Order should be construed to affect the rights of the Plaintiff ARCO or the Settling Parties with respect to claims which are preserved by the settlements.

9. There being no just reason to delay entry of Judgment, this Court should enter a final Judgment and Order of Dismissal as to Defendants Cecil Lawson, Cecil Lawson Buick-Cadillac, Inc., Jim Norton Buick, Inc., Nassif Buick Co., Inc., A.J. Nassif, Northcutt Chevrolet Buick Co., Milo Gordon Chrysler Plymouth Inc., Oba Carner; Premier Pontiac, Inc., Roger Stich, Sober Brothers, Inc., Spraker Volkswagen, Inc., Don Thornton Ford,

Inc., and Dean Bailey Olds, Inc., pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

Dated:


9/11/93



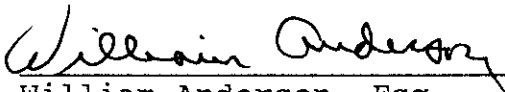
Thomas R. Brett

United States District Court Judge
mag.

Presented by:



Gary A. Eaton, Attorney
for Plaintiff, Atlantic
Richfield Company



William Anderson, Esq.
Liaison Counsel

ENTERED ON DOCKET

DATE 9-22-93

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOLLY ANN RIDER a/k/a POLLY A.)
RIDER a/k/a POLLY ANN RIDER;)
NORTH CAROLINA NATIONAL BANK;)
COUNTY TREASURER, Tulsa)
County, Oklahoma; BOARD OF)
COUNTY COMMISSIONERS, Tulsa)
County, Oklahoma,)

Defendants.

CIVIL ACTION NO. 93-C-677-E

FILED

SEP 22 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 21 day
of September, 1993. The Plaintiff appears by Stephen C.
Lewis, United States Attorney for the Northern District of
Oklahoma, through Wyn Dee Baker, Assistant United States
Attorney; the Defendants, County Treasurer, Tulsa County,
Oklahoma, and Board of County Commissioners, Tulsa County,
Oklahoma, appear not, having previously claimed no right, title
or interest in the subject property; and the Defendants, Dolly
Ann Rider a/k/a Polly A. Rider a/k/a Polly Ann Rider and North
Carolina National Bank, appear not, but make default.

The Court, being fully advised and having examined the
court file, finds that the Defendant, Dolly Ann Rider a/k/a Polly
A. Rider a/k/a Polly Ann Rider, acknowledged receipt of Summons
and Complaint on August 10, 1993; that Defendant, North Carolina
National Bank, acknowledged receipt of Summons and Complaint on
August 16, 1993; that Defendant, County Treasurer, Tulsa County,
Oklahoma, acknowledged receipt of Summons and Complaint on

July 29, 1993; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on July 30, 1993.

It appears that the Defendant, County Treasurer, Tulsa County, Oklahoma, filed his Answer on August 12, 1993, claiming no right, title or interest in the subject property; that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, filed its Answer on August 12, 1993, claiming no right, title or interest in the subject property; and that the Defendants, Dolly Ann Rider a/k/a Polly A. Rider a/k/a Polly Ann Rider and North Carolina National Bank, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that on August 21, 1969, Polly Ann Rider filed her voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 69-B-767 and was discharged on December 12, 1969; and on September 22, 1988, Polly Ann Rider filed her voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 88-02830-W and was discharged on December 29, 1988.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Eleven (11), Block One (1), Suburban Acres Fourth Addition to the City of Tulsa, County of Tulsa, State of Oklahoma, according to the recorded plat thereof.

The Court further finds that on August 19, 1965, Sam Rider and Dolly Ann Rider executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, their mortgage note in the amount of \$9,700.00, payable in monthly installments, with interest thereon at the rate of 5 3/4 percent per annum.

The Court further finds that as security for the payment of the above-described note, Sam Rider and Dolly Ann Rider, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated August 19, 1965, covering the above-described property. Said mortgage was recorded on August 20, 1965, in Book 3614, Page 577, in the records of Tulsa County, Oklahoma.

The Court further finds that on July 28, 1969, a Decree of Divorce, No. D-100690, was filed in the District Court In and For Tulsa County, State of Oklahoma, awarding Polly Ann Rider the subject real estate.

The Court further finds that on December 6, 1985, Sam Rider, a single person, executed a Quit Claim Deed regarding the subject property to Polly Ann Rider a/k/a Dolly Ann Rider, a single person. This deed was recorded on December 13, 1985 in Book 4912, Page 1285, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendant, Dolly Ann Rider a/k/a Polly A. Rider a/k/a Polly Ann Rider, made default under the terms of the aforesaid note and mortgage by reason of her failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, Dolly Ann Rider a/k/a Polly A. Rider a/k/a Polly Ann Rider, is indebted to the Plaintiff in the principal sum of \$1,451.04, plus interest at the rate of 5 3/4 percent per annum from August 1, 1992 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action.

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, claim no right, title or interest in the subject real property.

The Court further finds that the Defendants, Dolly Ann Rider a/k/a Polly A. Rider a/k/a Polly Ann Rider and North Carolina National Bank, are in default and have no right, title or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Dolly Ann Rider a/k/a Polly A. Rider a/k/a Polly Ann Rider, in the principal sum of \$1,451.04, plus interest at the rate of 5 3/4 percent per annum from August 1, 1992 until judgment, plus interest thereafter at the current legal rate of 3.40 percent per annum until paid, plus the costs of this action, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance,

abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Dolly Ann Rider a/k/a Polly A. Rider a/k/a Polly Ann Rider; North Carolina National Bank; and County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, Dolly Ann Rider a/k/a Polly A. Rider a/k/a Polly Ann Rider, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell, according to Plaintiff's election with or without appraisalment, the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff;

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under

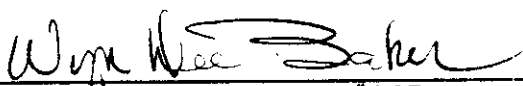
and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney



WYN DEE BAKER, OBA #465
Assistant United States Attorney
3900 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

Judgment of Foreclosure
Civil Action No. 93-C-677-E

WDB/esr

ENTERED ON DOCKET

DATE 9-22-93

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 22 1993

CAROL HORTON,

PLAINTIFF,

v.

Case No. 91-C-862-E

JOHN WESLEY TIPTON, ET AL,

DEFENDANTS.

O R D E R

Rule 35(a) of the Rules of the United States District Court for the Northern District of Oklahoma provides as follows:

(a) In any case in which no action has been taken by the parties for six (6) months, it shall be the duty of the Clerk to mail notice thereof to counsel of record or to the parties, if their post office addresses are known. If such notice has been given and no action has been taken in the case within thirty (30) days of the date of the notice, an order of dismissal may, in the Court's discretion, be entered.

In the action herein, notice pursuant to Rule 35(a) was mailed to counsel of record or to the parties, at their last address of record with the Court, on August 16, 1993. No action has been taken in the case within thirty (30) days of the date of the notice.

Therefore, it is the Order of the Court that this action is in all respects dismissed.

Dated this 21st day of Sept, 19 93.


United States District Judge

Handwritten:
9/22/93. *OK*

ENTERED ON DOCKET
SEP 22 1993
DATE _____

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ATLANTIC RICHFIELD COMPANY,)
)
Plaintiff,)
)
v.)
)
AMERICAN AIRLINES, INC., Et.,)
Al.,)
)
Defendants.)

Consolidated Cases Nos.

89-C-868-B
89-C-896-B
90-C-859-B

FILED

SEP 13 1993

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

MAGISTRATE'S REPORT AND RECOMMENDATION

On April 16,
~~Now on this~~ day of August, 1993, this matter *comes* on

for consideration of the Plaintiff Atlantic Richfield Company's ("ARCO") NOTICE OF MOTION AND MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT FOR SETTLEMENT BETWEEN ARCO AND OKLAHOMA STATE UNIVERSITY (docket no. 696). The Plaintiff ARCO appears by its attorney, Larry Gutterridge, the Defendants appear by their respective lead counsel, and William Anderson appears as liaison counsel. The Magistrate having examined the files and records and proceedings herein, having reviewed and considered the terms and conditions of the settlement in question, and being fully advised and informed in the premises REPORTS and RECOMMENDS as follows:

1. The settlement in the above captioned action between the Plaintiff Atlantic Richfield Company (ARCO) and Oklahoma State University should be found to be in good faith, and a final judgment barring all claims against Oklahoma State University for liabilities associated with the Sand Springs Site under state and federal law, except to the extent that such claims are preserved by the settlement, should be entered.

Handwritten:
145

2. Each and every claim asserted by the Plaintiff against Oklahoma State University should be dismissed in its entirety on the merits, with prejudice and without costs.

3. Each and every claim "deemed filed" by or against Oklahoma State University pursuant to the terms of the First Amended Case Management Order, Section VII.B., filed March 6, 1992, should be dismissed in its entirety on the merits, with prejudice and without costs.

4. In accordance with the terms of the agreement with Oklahoma State University, hereinafter referred to as the Agreement, a Judgment should be entered which includes the condition that the Agreement remains valid and in effect.

5. The terms "Site" and "volume" are as defined in the Agreement in ARCO's April 1, 1993, Motion for Determination of Good Faith Settlement Between ARCO and Oklahoma State University.

6. Any breach, whether by omission or commission, whether intentional or non-intentional, of Oklahoma State University's representation and warranty that, it neither possesses, or has a right to possess, nor is aware of any information which indicates that it is responsible for additional or greater volume than is set forth in the Volume Report attached to the Agreement, which has not been included in the documentation provided to ARCO in support of its offer to enter the Agreement, should render the Agreement null and void.

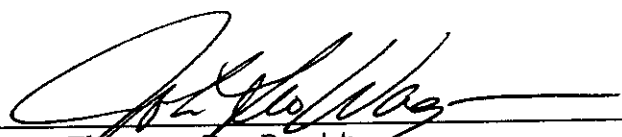
7. In the event that the Agreement is or becomes null and void, ^{the} ~~this~~ Judgment along with all orders entered in conjunction with the Agreement should be vacated nunc pro tunc, the settlement reflected in the Agreement should be terminated pursuant

to its terms, and the parties to the vacated Agreement should be deemed to have reverted to their respective status and position in the Action as of the date immediately prior to the execution of the Agreement.

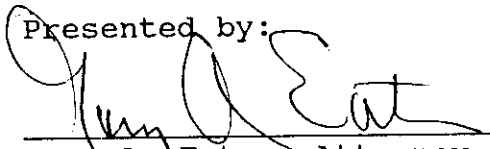
8. Nothing contained in ^{the} ~~this~~ Judgment and Order should be construed to affect the rights of the Plaintiff ARCO or Oklahoma State University with respect to claims which are preserved by the settlements.


9. There being no just reason to delay entry of Judgment, this Court should enter a final Judgment and Order of Dismissal as to Crane Company pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

Dated: 9/11/93


~~Thomas R. Brett~~
~~United States District Court Judge~~
Mag.

Presented by:


Gary A. Eaton, Attorney
for Plaintiff, Atlantic
Richfield Company


William Anderson, Esq.
Liaison Counsel

DATE _____

FILED

SEP 21 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Plaintiff,

vs.

No. 93-C-330-B

HILLCREST MEDICAL CENTER,

Defendant.

In keeping with the Court's order filed contemporaneously herewith, judgment is hereby entered in favor of the Plaintiff, Marriott Corporation, and against the Defendant, Hillcrest Medical Center, on Marriott Corporation's claim that the indemnity dispute herein is subject to arbitration, and Hillcrest Medical Center is hereby ordered to submit this dispute to arbitration pursuant to the Uniform Arbitration Act. Costs are hereby assessed against the Defendant, Hillcrest Medical Center, and in favor Plaintiff, Marriott Corporation, if timely applied for pursuant to Local Rule 6, and the parties are to pay their own respective attorneys' fees.

DATED this 20th day of September, 1993.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET
DATE SEP 21 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JOHN WESLEY SHERROD,
Plaintiff,
vs.
JIM EARP, et al.,
Defendants.

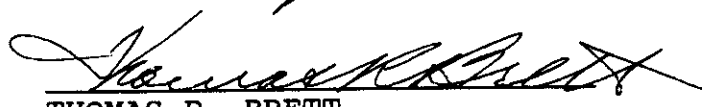
No. 92-C-862-B

FILED
SEP 29 1993
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

Defendants' motion to dismiss is hereby granted for the reasons stated in their brief in support. This action is accordingly dismissed.

SO ORDERED THIS 20th day of Sept. -, 1993.


THOMAS R. BRETT
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

KATHERINE CLINTON, GILMAN,
JAMES CLINTON AND LENORA CLINTON,

Plaintiffs,

vs.

BURLINGTON NORTHERN RAILROAD
COMPANY,

Defendant.

No. 92-C-1154-B

FILED

SEP 24 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER APPROVING SETTLEMENT

On this 14th day of September appeared Plaintiffs, Katherine Clinton-Gilman, James Clinton and Lenora Clinton, personally and by and through their attorneys, James T. Branam and Jerry Kirksey and the defendant, Burlington Northern Railroad Company, appears by and through its attorney, A. Camp Bonds, Jr., for the purpose of presenting a settlement agreement to the Court for its approval.

Upon hearing testimony of the parties and the stipulations of counsel the Court finds that the Plaintiff, Katherine Clinton-Gilman, is only 17 years of age and has not attained the age of majority. However, the Court further finds that she is married and is accompanied to the courtroom by her husband Lonnie Gilman. The Court further finds upon inquiry that Katherine Gilman understands the settlement agreement and it is fair in all respects and should be approved as being in the best interest of all the parties.

26

The Court finds that from the settlement sum of \$40,000 there will be deducted an attorney's fee of \$10,000 which is a reasonable and appropriate fee. In addition, there is a lien in favor of State Farm Insurance Company of a sum not to exceed \$10,000 and a potential claim of James Clinton for medical expenses not to exceed \$5,500.

The determination as to the amount of the State Farm lien and the amount of James Clinton's claim are to be determined by a Court of competent jurisdiction if said sums cannot be agreed upon.

The parties agree that because the sum of the settlement is less than the federal jurisdictional limit of \$50,000 that this case should be remanded back to the District Court of Ottawa County for proper adjudication of the liens.

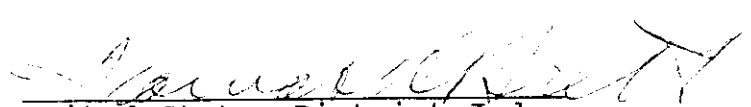
IT IS THEREFORE ORDERED ADJUDGED AND DECREED that the settlement agreement is approved and that upon payment of the sum of \$40,000 the Defendant Burlington Northern Railroad and its agents servants and employees shall be forever discharged from any further liability to the Plaintiffs or anyone claiming through them.

IT IS FURTHER ORDERED that this case is hereby remanded back to the District Court of Ottawa County and the Defendant shall pay the \$40,000 to the Plaintiffs and their attorneys. Upon receipt of the funds the attorneys for Plaintiff shall be allowed to withdraw their fee of \$10,000 and the balance of the funds to be placed in the custody of the Ottawa District Court until the lien disputes have been properly resolved.


The manner in which the District Court maintains custody of said funds is to be determined by said District Court as that Court deems proper under Oklahoma law.

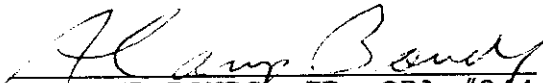
IT IS SO ORDERED

Dated this 16th day of September, 1993.


United States District Judge
for the Northern District of
Oklahoma

APPROVED AS TO FORM:


JERRY KIRKSEY
JAMES T. BRANAM
P. O. BOX 39
ANTLERS, OK 74523


A. CAMP BONDS, JR. OBA #944
BONDS, MATTHEWS, BONDS & HAYES
P. O. BOX 1906
MUSKOGEE, OK 74402-1906
(918) 683-2911

ENTERED ON DOCKET

DATE 9-21-93

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 21 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

FERRIS SAFFA, and
ANNE SAFFA,

Plaintiffs,

vs.

No. 92-C-46-E

UNITED STATES OF AMERICA,
ex rel. INTERNAL REVENUE
SERVICE,


Defendant.

JUDGMENT

This action came on for consideration before the Court, Honorable James O. Ellison, District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered,

IT IS THEREFORE ORDERED that the Plaintiffs take nothing from the Defendant, and that the action be dismissed on the merits.

ORDERED this 21st day of September, 1993.


JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

ENTERED ON DOCKET

DATE 9-21-93

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 21 1993

AQUILA ENERGY MARKETING
CORPORATION,

Plaintiff,

vs.

GOLDEN GAS ENERGIES, INC.,

Defendant.

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA


No. 93-C-267-E

ADMINISTRATIVE CLOSING ORDER

The Defendants having filed the 9th day of June, 1993, their petition in bankruptcy and these proceedings being stayed thereby, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

If, within thirty (30) days of a final adjudication of the bankruptcy proceedings the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

ORDERED this 21st day of September, 1993.


JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

DATE 9-21-93

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

PAMELA J. BROWN,

Plaintiff,

vs.

Case No. 93-C-736E

RIVERSIDE NURSING HOME, INC.,
an Oklahoma corporation, and
HOME OF FAITH, INC., an Oklahoma
corporation, d/b/a AMBASSADOR
MANOR SOUTH,

Defendants.

FILED

SEP 21 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

JUDGMENT

The Court having considered the Plaintiff's Combined Motion for Entry of Default Judgment and for Determination of Amount of Judgment and a decision having been duly rendered:

IT IS ORDERED AND ADJUDGED that the Plaintiff, Pamela J. Brown recover of the Defendants, Riverside Nursing Home, Inc. and Home of Faith, Inc., d/b/a Ambassador Manor South, jointly and severally, the sum of \$15,533.19, plus an additional, equal amount as liquidated damages as allowed by 29 U.S.C.A. § 216(b), for a total of \$31,066.38, plus reasonable attorney's fees in the amount of \$7,337.50, interest at the rate of 3.40% from the date of Judgment as provided by law, and costs of this action.

Dated at Tulsa, Oklahoma this 21 day of Sept, 1993.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

DATE _____

DATE 9-21-93

FILED

SEP 21 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Plaintiff,

v.

Defendants.

93-C-765 E

Now on this 21st day of September, 1993, this matter comes on for consideration of the Joint Stipulation and Application for an Order of Dismissal with Prejudice. The Court having examined the files and records and proceedings herein, and being fully advised and informed in the premises FINDS, ADJUDGES, ORDERS and DECREES that this case should be and is hereby dismissed with prejudice and this Order of Dismissal with Prejudice should be and is hereby entered as a final judgment of dismissal with prejudice pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

Dated: 9/1/93

James Ellison
United States District Court Judge

Presented by:

Gary A. Eaton, Attorney
for the Plaintiff

Elsie Draper, Attorney
for the Defendant

ENTERED ON DOCKET

DATE 9-21-93

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 20 1993

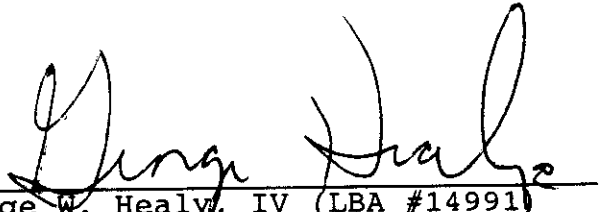
Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

MARVEL-MARIE GABRIEL,)
)
Plaintiff,)
)
vs.)
)
IT CORPORATION, PUBLIC)
SERVICE COMPANY OF OKLAHOMA,)
MONSANTO COMPANY and)
WESTINGHOUSE ELECTRIC,)
)
Defendants.)

Case No. 93-C-556-E

NOTICE OF DISMISSAL WITHOUT PREJUDICE

Plaintiff Marvel-Marie Gabriel hereby serves notice of her dismissal without prejudice of Defendant Westinghouse Electric Corporation in the captioned action. Each party shall bear its own costs.


George W. Healy, IV (LBA #14991)
Walter Willard (LBA #2185)
330 Camp Street
New Orleans, Louisiana 70130
(504) 524-3223

Attorney for Plaintiff
MARVEL-MARIE GABRIEL

CERTIFICATE OF SERVICE

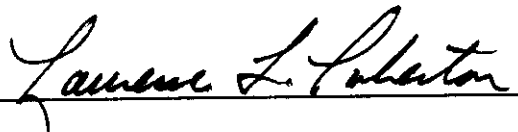
I, Laurence L. Pinkerton, do hereby certify that on the 20th day of September, 1993, I caused to be mailed a true and correct copy of the above and foregoing Notice Of Dismissal Without Prejudice, with proper postage thereon fully prepaid, to:

George W. Healy, IV, Esq.
Walter Willard, Esq.
330 Camp Street
New Orleans, Louisiana 70130

Chris L. Rhodes III, Esq.
RHODES, HIERONYMUS, JONES,
TUCKER & GABLE
Bank IV Center, Suite 2800
15 West Sixth Street
Tulsa, Oklahoma 74119-5430

G. Michael Lewis, Esq.
DOERNER, STUART, SAUNDERS,
DANIEL & ANDERSON
320 South Boston Avenue
Suite 500
Tulsa, Oklahoma 74103-3725

David L. Thomas, Esq.
HASWELL, JONES, HUGHEY,
VAUGHAN & THOMAS
100 North Broadway, Suite 2800
Oklahoma City, Oklahoma 73102



The signature is written in a cursive script and is positioned above a horizontal line.

ENTERED ON DOCKET

DATE 9-21-93

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 20 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

TIMOTHY MARCUS FRISBIE,
et al.,

Plaintiffs,

vs.

PEGGY J. JONES, et al.,

Defendants.

No. 92-C-1190-E

ADMINISTRATIVE CLOSING ORDER

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore it is not necessary that the action remain upon the calendar of the Court.

IT IS THEREFORE ORDERED that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation, order, judgment, or for any other purpose required to obtain a final determination of the litigation. The Court retains complete jurisdiction to vacate this order and to reopen the action upon cause shown by either party that settlement has not been completed and further litigation is necessary.

ORDERED this 20th day of September, 1993.


JAMES B. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

ENTERED ON DOCKET

DATE SEP 21 1993

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

PAMELA COOK,

Plaintiff,

vs.

Case No. 92-C-1128B

UNITED STATES DEPARTMENT OF
INTERIOR; BUREAU OF INDIAN
AFFAIRS; MANUEL LUJAN, in his
official capacity as SECRETARY
OF THE INTERIOR; EDDIE BROWN,
in his official capacity as
ASSISTANT SECRETARY OF THE
INTERIOR; DAVID MATHESON, in his
official capacity as DEPUTY
ASSISTANT SECRETARY OF THE
INTERIOR; BILL COLLIER, in his
official capacity as ANADARKO
AREA DIRECTOR; and JULIA LANGDON,
in her official capacity as
SUPERINTENDENT OF PAWNEE AGENCY,

Defendants.

FILED

SEP 21 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

DISMISSAL WITHOUT PREJUDICE

The Court has considered the Stipulation for Dismissal without prejudice filed by the Plaintiff, Pamela Cook, and above-named Defendants, and finds that the stipulation for dismissal should be allowed and the relief requested therein granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the above styled and numbered cause be and is hereby dismissed without prejudice against the above-named Defendants.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court, that each party shall be responsible for its own costs and attorney fees incurred as a result of the above captioned cause.

S/ THOMAS R. BRETT

U.S. DISTRICT JUDGE

ENTERED ON RECORD
DATE SEP 21 1993

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

CIVIL ACTION NO. 93-C-459-B

TWENTY-FIVE THOUSAND NINE)
HUNDRED SIXTY-EIGHT DOLLARS)
(\$25,968.00) IN UNITED)
STATES CURRENCY,)

Defendant.)

FILED

SEP 21 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

**JUDGMENT OF FORFEITURE
BY DEFAULT AND BY STIPULATION**

This cause having come before this Court upon the plaintiff's Application for Judgment of Forfeiture by Default and by Stipulation against the defendant currency, the Court finds as follows:

The verified Complaint for Forfeiture In Rem was filed in this action on the 14th day of May 1993, alleging that the defendant currency was subject to forfeiture pursuant to 21 U.S.C. § 881, because it was furnished, or was intended to be furnished, in exchange for a controlled substance in violation of 21 U.S.C. § 881 of the laws of the United States.

Warrant of Arrest and Notice In Rem was issued on the 14th day of May 1993, by Clerk of the United States District Court for the Northern District of Oklahoma to the United States Marshals for the Northern Districts of Oklahoma.

On the 30th day of June 1993, the United States Marshals Service served a copy of the Complaint for Forfeiture In Rem and the Warrant of Arrest and Notice In Rem on the defendant currency, to-wit:

TWENTY-FIVE THOUSAND NINE
HUNDRED SIXTY-EIGHT DOLLARS
(\$25,968.00) IN UNITED
STATES CURRENCY.

The following individual was determined to be a potential claimant in this action with possible standing to file a claim herein, and the United States Marshal for the Northern District of Oklahoma personally served the following persons and entities having a potential interest in this action, to-wit:

TROY HOWARD COOL, JR.

Served July 1, 1993,
by serving John Street,
his attorney, who agreed
to accept service.

United States Marshals 285s reflecting the service set forth above are on file herein.

All persons interested in the defendant currency were required to file their claims herein within ten (10) days after service upon them of the Warrant of Arrest and Notice In Rem, publication of the Notice of Arrest and Seizure, or actual notice of this action, whichever occurred first, and were required to file their answer(s) to the Complaint within twenty (20) days after filing their respective claim(s).

No claims have been filed in this matter by any individual or entity.

Pursuant to sealed Plea Agreement of Troy Howard Cool in Case No. 92-CR-147-B in the United States District Court for the Northern District of Oklahoma, and Stipulation for Forfeiture entered into by and between Troy Howard Cool and the plaintiff, and on file herein, Troy Howard Cool agreed to the forfeiture of the defendant currency.

No other persons or entities upon whom personal service was effectuated more than thirty (30) days ago have filed a Claim, Answer, or other response or defense.

The United States Marshals Service gave public notice of this action and arrest to all persons and entities by advertisement in the Tulsa Daily Commerce and Legal News, a newspaper of general circulation in the district in which this action is pending, on July 29, August 5 and 12, 1993. Proof of Publication was filed herein on September 10, 1993.

No other claims in respect to the defendant currency have been filed with the Clerk of the Court, and no other persons or entities have plead or otherwise defended in this suit as to said defendant currency, and the time for presenting claims and answers, or other pleadings, has expired and, therefore, default exists as to the defendant currency and all persons and/or entities interested therein, except Troy Howard Cool, who has by

virtue of the Plea Agreement and Stipulation for Forfeiture referenced above consented to forfeiture of the defendant currency.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED that Judgment be entered against the following-described defendant currency:

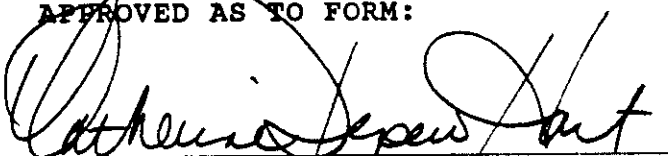
**TWENTY-FIVE THOUSAND NINE
HUNDRED SIXTY-EIGHT DOLLARS
(\$25,968.00) IN UNITED
STATES CURRENCY,**

and that such currency be, and it is, hereby forfeited to the United States of America for disposition by the United States Marshals Service according to law.

S/ THOMAS R. BRETT,

THOMAS R. BRETT, United States
District Judge

APPROVED AS TO FORM:



CATHERINE DEPEW HART
Assistant United States Attorney

N:\UDD\CHOOK\FC\COOL3\03334